

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

DIVORCE CAUSE NO.107 OF 2010

J.N.K.....PETITIONER

VERSUS

P.N.W.....RESPONDENT

J U D G M E N T

The petitioner and the respondent were married on 24th April 2007 at the Registrar's office in Nairobi. The marriage was celebrated under the **Marriage Act**. After the celebration of the said marriage, the petitioner and the respondent cohabited together as husband and wife in Nairobi. The marriage is blessed with one issue, a daughter born on 8th July 2004. According to the petitioner, since the celebration of the said marriage, the respondent had treated him with cruelty. In particular, the petitioner averred that the respondent had shown contempt towards the marriage by denying him his conjugal rights. He accused the respondent of on several occasions embarrassing him in public by abusing him and thus causing him to suffer mental anguish. The petitioner averred that the respondent had continued with her acts of cruelty to the extent that it had negatively affected the marriage. The petitioner stated that due to the respondent's behaviour, he was forced to leave the matrimonial home in February 2010. The petitioner therefore accused the respondent of constructively deserting from the matrimonial home. The petitioner urged the court to grant his petition for divorce, because in his opinion, his marriage to the respondent had irretrievably broken down.

The respondent was duly served with a copy of the petition. She did not enter appearance. Neither did she file an answer to the petition. The hearing of the petition therefore proceeded as an undefended divorce cause. This court heard the oral testimony adduced by the petitioner. The petitioner essentially reiterated the contents of the petition. This court has carefully considered the said evidence. It was apparent to the court that the marriage between the petitioner and the respondent has indeed irretrievably broken down. A marriage whose consummation is frustrated by one party denying the other conjugal rights is indeed doomed to fail. It was clear from the evidence adduced by the petitioner that his marital relationship with the respondent deteriorated when the petitioner and the respondent were no longer meaningfully communicating. It is now more than one (1) year since the petitioner and the respondent were separated. There is no evidence to suggest that the petitioner and the respondent have made any effort to be reconciled or to resume cohabitation. This court is of the view that the petitioner established, to the required standard of proof on a balance of probabilities, the matrimonial offences of cruelty and constructive desertion.

In the premises therefore, the marriage celebrated on 24th April 2007 between the petitioner and the respondent at the Registrar's office in Nairobi is hereby dissolved. *Decree nisi* dissolving the said marriage is hereby issued. The *decree nisi* shall be made absolute thirty (30) days from the date of this judgment. The issue of custody and maintenance of the child of the marriage shall be canvassed before the Children's Court which has jurisdiction in the first instance to address the issue. There shall be no orders as to costs.

DATED AT NAIROBI THIS 12TH DAY OF MAY, 2011

L. KIMARU
JUDGE