

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

DIVORCE CAUSE NO.174 OF 2009

L.M. N.....PETITIONER

VERSUS

E.W.M.....RESPONDENT

J U D G M E N T

The petitioner and the respondent were on 28th January 2005 married 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 at [.....]estates in Nairobi. The marriage was blessed with one (1) issue, a daughter, born on 24th March 2006. According to the petitioner, since the celebration of the said marriage, the respondent had treated him with cruelty. In particular, he averred that the respondent was a person of violent temperament who was prone to abusing him without any provocation. He accused the respondent of being a person of suspicious and possessive character, which behaviour resulted in the respondent, without any justification, unduly accusing the respondent of infidelity and irresponsibility. The petitioner averred that the respondent had since celebration of the said marriage become an alcoholic which made her fail to perform her duties as a mother and a wife. The petitioner stated that the respondent had kept company with persons of dubious character. The petitioner stated that the relationships bordered on illicit romantic affairs. He averred that the respondent had on 4th October 2008 without any justification deserted from the matrimonial home. It is on account of the above facts that the petitioner was of the view that his marriage to the respondent was no longer sustainable and should therefore be dissolved.

When the respondent was served with the copy of the petition, she duly entered appearance and filed answer to the petition. She also cross-petitioned for divorce. She denied the averments made by the petitioner to the effect that she was the cause of the breakdown of the marriage. She denied that she had treated the petitioner with cruelty. She however admitted that she had been forced to leave the matrimonial home on 4th October 2008 on account of the petitioner's extra marital affairs and cruel treatment. In her cross-petition, she accused the petitioner of committing adultery with several women, both known and unknown to the respondent. She further stated that the petitioner had treated her with cruelty especially by being domineering, inconsiderate and a bully during the subsistence of the marriage. In particular, the respondent complained that the petitioner openly had extra marital affairs with several women without taking into consideration the effect such behaviour had on the respondent. She accused the respondent of neglecting and failing to take care of their daughter especially when she needed hospitalization. The respondent formed the opinion that taken cumulatively, the petitioner's conduct was such that the marriage was doomed to fail and therefore could not be sustained. The respondent urged the court to dismiss the petition for divorce but proceed to grant her cross-petition for divorce.

During the hearing of the divorce case, this court heard oral testimony adduced by the petitioner and the

respondent. The two respectively reiterated the contents of the petition and the cross-petition. The issue for determination by this court is whether sufficient evidence was placed before this court to enable this court grant the divorce craved for by the petitioner and the respondent. It was apparent from the evidence adduced by the petitioner and the respondent that their marriage had indeed irretrievably broken down by the time the two separated on 4th October 2008. The petitioner and the respondent no longer had respect for each other. They abused each other. They accused each other of having extra marital affairs. The two no longer trusted each other. The respondent complained that the petitioner was rarely at home because of his long stay away from home. She accused the petitioner of failing to support her when their child became sick and required hospitalization. On the other hand, the petitioner complained that the respondent made the atmosphere at their matrimonial home so hostile and unbearable that he no longer had peace of mind when he retired to the said matrimonial home. All these accusations and counter-accusations taken cumulatively established to the required standard of proof on a balance of probabilities the grounds of cruelty by both the petitioner and the respondent. The petitioner and the respondent have been separated since 4th October 2008. It was apparent that neither the petitioner nor the respondent had put in place mechanism of promotion of reconciliation with a view to the petitioner and the respondent restoring marital harmony. This period of separation constitutes desertion both constructively and in fact.

In the premises therefore, the marriage solemnized between the petitioner and the respondent on 28th January 2005 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 dispute regarding the custody and maintenance of the child of the marriage shall be determined in the first instance by the Children's Court which has the requisite jurisdiction. There shall be no orders as to costs.

DATED AT NAIROBI THIS 12TH DAY OF MAY, 2011

L. KIMARU

JUDGE