

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
DIVORCE CAUSE NO.167 OF 2009

L.R.B.....PETITIONER

VERSUS

S.C.....RESPONDENT

J U D G M E N T

The petitioner and the respondent are Italians nationals. They were married on 23rd December 2000 at Mai Mahiu in Kenya. After the celebration of the said marriage, the petitioner and the respondent cohabited together as husband and wife in various estates in Nairobi. The couple is blessed with two (2) issues, a boy and a girl, born respectively on 11th December 2003 and on 14th March 2005. According to the petitioner, the respondent had since the celebration of the said marriage treated the petitioner with cruelty. In particular, the petitioner complained that the respondent had on several occasions verbally abused him thereby making his stay untenable in the matrimonial home. He averred that the respondent had denied him his conjugal rights for a period of more than two years. He accused the respondent of physically assaulting him on several occasions including one occasion during the respondent's brother's wedding. He stated that all effort at reconciliation was frustrated by the respondent's persistent cruelty. The petitioner was of the view that his marriage to the respondent had irretrievably broken down and therefore the marriage should be dissolved by this court granting his petition for divorce. The petitioner prayed to be granted custody of the children of the marriage. He further prayed for the court to compel the respondent to share the cost of maintaining and educating the children of the marriage.

Upon being served with the petition, the respondent entered appearance, filed answer to the petition, and cross-petitioned for divorce. The respondent denied the allegations made in the petition to the effect that she had been cruel to the petitioner. In her cross-petition, she stated that it was the petitioner who had treated her with cruelty. She stated that the petitioner was a person of ungovernable temper who had more often than not been aggressive towards her to the extent that the respondent had suffered anxiety, psychological torture and embarrassment. The respondent accused the petitioner of behaving in a manipulative, devious and scheming manner towards her. She complained that the petitioner had on several occasions threatened her with physical harm and death. She therefore urged the court to grant her cross-petition for divorce because, in her opinion, the marriage was no longer salvageable due to the petitioner's conduct.

At the hearing of the petition, the respondent adduced evidence in support of her cross-petition for divorce. The petitioner chose not to offer any evidence in support of his petition for divorce. The respondent reiterated the contents of her cross-petition. She told the court that she had been separated from the petitioner from 26th November 2009. She stated that there was no possibility that she could be reconciled with the petitioner. On the issue of custody and maintenance of the children, it was her case that she had already reached a settlement with the petitioner. She therefore urged the court to grant the petition for divorce. This court has carefully considered the facts of this divorce case. It was clear from the evidence adduced by the respondent that the marriage between the petitioner and the respondent is

irretrievably broken down with no possibility of salvage. It was apparent from the pleadings that the petitioner and the respondent were temperamentally incompatible. This was exhibited by the complaint made by both the petitioner and the respondent (as against each other) which was to the effect that the other was a person of uncontrollable temper. The petitioner and the respondent have been separated for more than a year and a half. The respondent was emphatic in her oral testimony that she was not prepared to be reconciled with the petitioner. This court formed the opinion that the matrimonial grounds of cruelty and desertion were established to the required standard of proof on a balance of probabilities.

In the premises therefore, the marriage celebrated between the petitioner and the respondent on 23rd December 2000 at Mai Mahiu 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 children of the marriage has already been mutually agreed between the petitioner and the respondent. There shall be no orders as to costs.

DATED AT NAIROBI THIS 12TH DAY OF MAY, 2011

L. KIMARU

JUDGE