

J.O.O.....PETITIONER

Versus

O.N.O.RESPONDENT

AND

L.O.....CITED CO-RESPONDENT

JUDGMENT

The parties to this cause met in 1992 when the Petitioner was a student at Kenya Polytechnic in Nairobi. On 30th June 1994 they solemnized their marriage at the Registrar of Marriages' Office in Nairobi. Thereafter they lived and cohabited in G[....] Estate and were blessed with one child, S.S.A. born in February 1994.

In her amended petition, the Petitioner claims that the Respondent has been cruel to her by failing to show love for her and instead displaying total contempt for the marriage, accusing her of extra-marital affairs and failing to provide for the family. She also accuses the Respondent of desertion and adultery in that he has since October 1994 deserted the matrimonial home and in 2002 he married one L.N. .

On these grounds the Petitioner prays for divorce, custody of the child of the marriage and costs of this cause.

Upon being served the Respondent filed an answer to petition denying the allegations of cruelty and desertion and cross-petitioned for divorce on the grounds of adultery and desertion. He averred that since 1997, the Petitioner deserted the matrimonial home and lived and committed adultery with L.O the co-respondent, with whom she has had two children, S.O. born on [date withheld] and E.O. born on [Date withheld] He also prayed for the costs of this cause and that the name of the child of their marriage which the Petitioner unlawfully changed to S.S.A be restored to her original name of O.O

At the hearing the Petitioner withdrew her petition and did not participate in the proceedings. In his testimony the Respondent reiterated the averments in his cross-petition and added that after their child was born, they wound up their affairs in Kenya and went to Nigeria. However, as the political situation was not good in that country they returned to Kenya in 1996.

As he did not have a job, life was difficult. The Petitioner secured a job with a computer firm. In that course of dropping and picking the Petitioner she introduced him to the co-respondent. Later the Petitioner started disappearing the whole weekend. He learned that she used to go to the co-respondent's house on Thika Road. In an effort to secure a reconciliation he later met the Petitioner's mother who told him that she had given her daughter, the Petitioner, to another man and that the Respondent should forget all about her. In the circumstances he prayed for divorce and the custody of their child whom he claimed is distressed and keeps calling him.

I have considered the matter. The petition having been withdrawn, the Petitioner's allegations of cruelty, adultery and desertion against the Respondent are hereby dismissed. The Petitioner has not filed any document to controvert the allegations of desertion and adultery. In the circumstances I am left with no option but to believe the Respondent's testimony and find the Petitioner has been guilty of both desertion and adultery. As her mother allegedly said, she has committed adultery with the co-respondent with whom she has had two children.

The marriage between the parties has irretrievably broken down and there is nothing left of it. In the

circumstances I grant the cross-petition and dissolve the marriage between the Petitioner and the Respondent. A decree nisi shall issue forthwith to be made absolute after thirty days. Each party shall bear its own costs.

The child of the marriage is 17 years old. She appeared in court and told me herself that she would like to continue living with her mother but she would like to occasionally visit the Respondent. Consequently I grant her custody to the Petitioner and direct that the Petitioner should allow her to visit her father whenever she wishes.

DATED and delivered this 12th day of July, 2011.

**D.K. MARAGA
JUDGE**