



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT ELDORET**

Divorce Cause 3 of 2009

M.F.O.W.....PETITIONER

VERSUS

D.M.W.....RESPONDENT

JUDGMENT

The parties herein solemnized their marriage under the African Christian Marriage and Divorce Act chapter 151 of the Laws of Kenya at the C.P.K Christ Church in Kakamega on the 17th day of August 1996 and were issued with certificate of marriage No. [PARTICULARS WITHHELD] Thereafter they cohabited and lived at Pioneer Estate in Eldoret and later in Kimumu, Eldoret. The marriage was not blessed with any issue.

The wife now brings this petition for divorce on the grounds of cruelty and desertion both actual and constructive. The particulars of cruelty are that the Respondent has exhibited hostility towards the Petitioner and has failed, deliberately, to support the Petitioner financially and the Respondent has completely and deliberately declined to seek medical attention for his medical condition affecting his reproductive health and these events have caused untold mental anguish to the Petitioner. The Petitioner's further case is that the Respondent has estranged himself from the Petitioner making it impossible for the Petitioner to go to the matrimonial home and on those grounds the Petitioner stated that the marriage has irretrievably broken down.

On his part the Respondent denies that he has treated the Petitioner with cruelty or that he has any medical condition that has resulted to the pair not getting any children. He has filed what he calls a counter petition in which he contends that the Petitioner has engaged in various acts of cruelty and desertion making it difficult for the Respondent to enjoy marital happiness and the fruits of companionship in marriage. He particularizes the Petitioner's cruelty as her abdication of her roles and duty of a wife, her refusal to acknowledge and entertain, bother about and make hospitable the Respondent's visitors, friends and relatives whenever they visited the matrimonial home and the Respondent was thereby embarrassed and isolated by the immediate family members. That the Petitioner has exhibited judgmental/tendencies to the Respondent, is arrogant to the point that communication between the two has completely broken down. The Respondent contends that the Petitioner has uterine fibroids and that is the reason why the pair do not have children. He further adds that the Petitioner deserted the matrimonial home and went first to the United Kingdom and then to the United states of America and whenever she come back to this country she did not always stay at the matrimonial home and at times she came into the country unannounced and mostly kept away from the Respondent. The Respondent contends that this marriage has

irretrievably broken down.

At the hearing of the Petition the Petitioner gave evidence that there was no relationship left between her and her husband and their interests were different for whereas she wanted children her husband's refused to take prescribed medicine to rectify his low sperm count and its slow motility. She added that she left the country with her husband's blessings and he wrote a letter allowing her to travel and even threw a farewell party. However, her husband withdrew from her whenever she visited and he squandered all the money the Petitioner sent to him and all efforts at reconciliation by family and church elders had failed. She said that although she had contributed to the purchase of the matrimonial home the Respondent had prevented the Petitioner from going there whenever she was in Kenya. She admitted that she had uterine fibroids but that the same had been surgically removed and as a nurse she knew that fibroids cannot prevent a woman from conceiving. She said that during 2007 in January she came to Kenya unannounced because she did not want her husband to go away from home as he did whenever she told him that she was visiting. She concluded that there really was no marriage subsisting between them and she did not condone or connive at the situation they find themselves in and she prayed that this court do dissolve the marriage.

The Respondent gave evidence that he had never been cruel to his wife and admitted that they had not exercised their conjugal rights since 2007 because of his wife's absence and partly because the Petitioner always complained of abdominal pains and she visited him when her monthly periods were on and the flow was very heavy thereby preventing the exercise of conjugal rights. He blames the Petitioner for the break up of their marriage. He said that the Petitioner treats him badly and this has caused him mental anguish and that the Petitioner has completely refused to participate in reconciliation efforts. He prayed that the marriage be dissolved.

It is abundantly clear from the evidence of the parties herein that whatever is left of their marriage is negligible, in fact only the certificate of marriage is still intact. Each party has succeeded in proving cruelty against the other. The parties have lived apart for a long time and more particularly since 2007. Husband and wife herein have become strangers to each other. Lack of a child in marriage is stressful to many married couples but it is not a ground for granting of an order for divorce. The parties herein, not having borne a child, blame each other for it. That fact has pulled the parties further apart and indeed each party has used that as one of the reasons they should go their separate ways. Their differences are clearly irreconcilable and what is left of the marriage is for dissolving and I accordingly dissolve this marriage and order that each party bears its own costs. A decree nisi shall issue for three months.

DATED AND DELIVERED AT ELDORET THIS 25TH DAY OF FEBRUARY, 2010

P.M.MWILU

JUDGE

IN THE PRESENCE OF:-

Paul Ekitela - Court clerk

Chemoiyai holding brief for Chanzau Advocate for the Petitioner.

N/A for the Advocate for the Respondent.