

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
DIVORCE CAUSE NO.114 OF 2009

E. O.O.....PETITIONER
VERSUS
V.M.....
RESPONDENT

J U D G M E N T

The petitioner and the respondent were married on 28th July 2006 under the **Marriage Act** at the District Commissioner's office, Malindi. Thereafter, the petitioner and the respondent cohabited together as husband and wife in Malindi and Nairobi. The marriage has not been blessed with any issues. According to the petitioner, the respondent re-located to Dubai in January 2009. The petitioner complained that since the celebration of the said marriage, the respondent has treated him with cruelty and has further been guilty of adultery. The respondent set out the particulars of cruelty and adultery in his petition. In particular, he complained that on diverse dates between August and October 2008, without any justification, the respondent physically and verbally assaulted him causing him to sustain physical injury and mental stress. He explained that the respondent had caused him embarrassment at his place of work by her habit of abusing him in the presence of his workmates. As regard adultery, the petitioner stated that the respondent committed adultery with an arab man and in the process was infected with a sexually transmitted disease which she in turn infected the petitioner. It was for the above reasons that the petitioner was of the view that the difference between himself and the respondent are of such irreconcilable nature that his marriage to the respondent has irretrievably broken down. He therefore urged the court to grant his petition for divorce.

The respondent was served with the petition. She entered appearance but did not file any papers in answer to petition. Directions were duly issued by the Deputy Registrar of the court certifying that the petition was ready for hearing and should proceed for hearing as an undefended petition for divorce. At the hearing of the petition, this court heard the oral evidence adduced by the petitioner. He basically reiterated the contents of the petition. From the said evidence, it was clear that the marital relationship of the petitioner and the respondent has indeed broken down. The incidents of physical assault and verbal abuse that resulted in the petitioner severally seeking medical attention is proof that the petitioner and the respondent were not in a loving relationship. The testimony of the petitioner proves that the respondent lacked any respect for the petitioner. This was exhibited by her behaviour of verbally abusing him in the presence of his relatives and friends and thereby causing embarrassment and humiliation to the petitioner. The petitioner proved that the respondent engaged in an adulterous relationship with another man when he testified that he was infected with a sexually transmitted disease. The fact that the marriage was not blessed with any children, may be a contributory factor for the deterioration of the marriage. This court therefore holds that the petitioner established to the required standard of proof of balance on probabilities that indeed his marriage to the respondent has irretrievably broken down with no chance of being revived. It is apparent that any effort at reconciliation will not bear any fruit.

In the premises therefore, I will allow the petition for divorce. The marriage solemnized on 28th July 2006 at the District Commissioner's office, Malindi between the petitioner and the respondent is hereby dissolved. A *decree nisi* dissolving the said marriage shall issue forthwith and shall be made absolute one month hence. There shall be no orders as to costs.

DATED AT NAIROBI THIS 24TH DAY OF SEPTEMBER, 2010

L. KIMARU
JUDGE