

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
DIVORCE CAUSE NO.60 OF 2008

A.W.O.....PETITIONER
VERSUS
M.O.....RESPONDENT

J U D G M E N T

The petitioner and the respondent were married on 7th September 2001 under the **Marriage Act** at the Registrar's office in Nairobi. According to the petitioner, prior to the said marriage, she had cohabited with the respondent from 1995. In the period that the petitioner and the respondent had cohabited together as husband and wife, (between 1995 and 2008), they lived in various estates in Nairobi. The couple has been blessed with one child. According to the petitioner, since the celebration of the said marriage, the respondent has been guilty of the matrimonial offence of adultery. She averred that the respondent had been engaged in an extra marital relationship with one C.J. She accused the respondent of treating her with cruelty. In particular, the petitioner stated that the respondent had failed to provide emotional support to the petitioner. The petitioner averred that the respondent had been engaged in an open adulterous relationship thus physically and psychologically affecting the emotional and mental well being of the petitioner. The petitioner was therefore of the view that her marriage to the respondent ought to be dissolved by this court granting her petition for divorce. The petitioner further prayed to be granted custody of the child of the marriage. She further prayed to be paid a reasonable amount for her maintenance and that of the child. The respondent was served with the petition. He appointed an advocate to act on his behalf. However, the said advocate did not file any papers in answer to the petition. The petition was therefore unopposed.

At the hearing of the petition, I heard oral evidence adduced by the petitioner. She basically reiterated the contents of the petition. She testified that she has been separated from the respondent for a period of about two (2) years. It was her testimony that the respondent informed her that he wished to marry another wife. The petitioner was opposed to this arrangement hence the respondent's decision to openly engage in an illicit relationship with the other woman called C. J. She testified that the respondent assaulted her and threw her out of the matrimonial home when she persisted in her refusal to allow the respondent to marry a second wife. She stated that although she had tried to be reconciled with the respondent, all attempts have been in vain due to the respondent's insistence of continuing with the relationship with the other woman. The petitioner was of the view that her marriage to the respondent had irretrievably broken down. She urged the court to grant her petition for divorce.

I have carefully considered the said evidence adduced by the petitioner. The same was uncontroverted. The petitioner established that indeed the respondent has been guilty of the matrimonial offence of adultery and cruelty. The respondent informed the petitioner that he had married C.J as his second wife. This is despite the fact that having married the petitioner under the **Marriage Act** which is a monogamous marriage, the respondent was prohibited by the law from marrying another wife. The petitioner did not accept the respondent's proposal to marry a second wife. Due to this disagreement, the respondent chased the petitioner from the matrimonial home. The couple has been separated for a period of two (2) years. It is apparent that the chance of the petitioner and the respondent being reconciled is remote. I agree with the petitioner that her marriage to the respondent has irretrievably broken down with no chance of reconciliation. I will therefore allow the petition for divorce.

The marriage that was solemnized on 7th September 2001, between the petitioner and the respondent at the Registrar's office in Nairobi is hereby annulled. A *decree nisi* is hereby issued dissolving the said marriage. The *decree nisi* shall be made absolute thirty (30) days from the date of this judgment. The petitioner shall have the custody of the child of the marriage. The petitioner shall be at liberty to make an appropriate application for maintenance before the Children's Court. There shall be no orders to costs.

DATED AT NAIROBI THIS 26TH DAY OF NOVEMBER, 2010

L. KIMARU
JUDGE