



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
DIVORCE CAUSE NO.168 OF 2009

C.K. M.....PETITIONER

VERSUS

S.W.M.....

RESPONDENT
JUDGMENT

The petitioner and the respondent were on 14th July 2006 married at the District Commissioner’s office at Eldoret. The marriage was celebrated under the **Marriage Act**. The petitioner and the respondent cohabited as husband and wife in various estates within Eldoret town soon after their marriage until June 2007 when cohabitation was terminated. The marriage was not blessed with any children. According to the petitioner, the marriage was not a happy one. The petitioner accused the respondent of subjecting her to physical, emotional and psychological cruelty. In particular, she averred that on various occasions during the subsistence of the marriage, the respondent physically assaulted her. She stated that the respondent threatened to kill her to an extent that she reported the incident to the police. She accused the respondent for committing adultery with one B W. The petitioner stated that because of these acts of cruelty, she was forced to leave the matrimonial home on 27th June 2007. Since then, she has been separated from the respondent. The petitioner was of the view that her marriage to the respondent had irretrievably broken down with no possibility of salvage. She therefore prayed the court to grant her petition divorce. She further prayed that the respondent be compelled to provide maintenance for her upkeep.

The respondent was served with the petition for divorce. He entered an appearance through an advocate. He filed an answer to the petition and cross-petitioned for divorce. He denied the allegations made by the petitioner in her petition for divorce and put the petitioner to strict proof thereof. In particular, he denied that the allegation that he had been cruel to the petitioner. The respondent accused the petitioner of being a drunkard. He further accused the petitioner of deserting the matrimonial home without any justifiable reason. The respondent cross-petitioned for divorce. He averred that since June 2007, the petitioner had deserted the matrimonial home thereby resulting in the breakdown of the marriage. He asked the court to dismiss the petition for divorce and grant his cross-petition for divorce. The petitioner filed a reply to the answer to the petition and answer to the cross-petition. She denied the claim by the respondent that she had in any way contributed to the breakdown of the marriage. She put the respondent to strict proof thereof.

Directions were duly taken before the Deputy Registrar. The petition was fixed for hearing by the petitioner. The respondent’s counsel was served. On the hearing date, neither the respondent nor his counsel attended court. This court, being satisfied that the respondent was duly served with the hearing notice, ordered the petitioner to proceed and adduce evidence in support of her petition for divorce. In her testimony, the petitioner essentially reiterated the contents of her petition for divorce. She stated that the respondent treated her with cruelty especially when he came home when he was drunk. She narrated how on two occasions she was compelled to make a criminal report to the police after the respondent had assaulted her. It was her testimony that her marriage to the respondent was not a happy one because of the respondent’s behaviour of mistreating her. She stated that since June 2007, she has been separated from the respondent. It was her opinion that the marriage had been irretrievably broken down and any effort at reconciliation did not bear any fruit.

This court has carefully evaluated the evidence adduced by the petitioner in support of her petition for divorce. It has also considered the pleadings filed by the parties herein in support of their respective

opposing positions. It was clear to the court that the petitioner established the ground of cruelty in her petition for divorce. The petitioner gave evidence how she was physically assaulted on several occasions by the respondent. She also narrated how the respondent threatened to kill her after they had quarreled. The petitioner was compelled to leave the marriage after her stay in the matrimonial home became untenable. The petitioner and the respondent have been living apart since June 2007. It was evident to the court that the petitioner and the respondent can no longer live together as husband and wife due to fundamental difference in regard to how they see their respective roles in the marriage. A marriage that is characterized by physical assaults is doomed to fail. This court therefore agrees with the petitioner that her marriage to the respondent has irretrievably broken down with no possibility of salvage. In the premises therefore, this court holds that the petitioner established her petition for divorce. The marriage solemnized on 14th July 2006 between the petitioner and the respondent at the District Commissioner's office in Eldoret is hereby annulled. 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. There shall be no orders as to costs.

DATED AT NAIROBI THIS 26TH DAY OF NOVEMBER, 2010

**L. KIMARU
JUDGE**