

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
DIVORCE CAUSE NO.99 OF 2002

J.K.S.....PETITIONER

VERSUS

L.T.S.....RESPONDENT

J U D G M E N T

The petitioner and the respondent were married on 11th August 1994 under the **African Christian Marriage and Divorce Act**. Thereafter, the petitioner and the respondent cohabited together as husband and wife in their matrimonial home at South C estate in Nairobi. The couple is blessed with three children aged between twenty six (26) years and nineteen (19) years. On 25th May 2002, the petitioner filed the present petition for divorce seeking the annulment of the said marriage. The petitioner alleged that since the celebration of the said marriage, the respondent had treated him with cruelty by verbally abusing him and falsely accusing him of engaging in extra marital affairs and thus causing to suffer prolonged anxiety, distress, mental anguish and psychological torture. The petitioner particularized the instances which he alleged the respondent had been cruel to him. He averred that the respondent did on 21st December 1993 leave the matrimonial home without any justifiable cause. Since then, the petitioner averred that he had been separated from the respondent. Because of the above reasons, the petitioner prayed that the court annuls the marriage by granting the petition for divorce.

When the respondent was served with the petition, she filed answer to the petitioner. She denied the petitioner's allegation that she had been cruel to him. To the contrary, the respondent averred that it was the petitioner who had been cruel to him by physically assaulting her on various occasions that she enumerated in her answer to the petition. The respondent averred that the petitioner has had a long standing illicit relationship with one V.M which has resulted in the birth of two issues. The respondent stated that the petitioner has been guilty of adultery by cohabiting with the said V.M during the subsistence of their marriage. It is on these grounds of cruelty and adultery that the respondent crossed petitioned to be divorced from the petitioner. The respondent prayed to be granted the custody of the children of the marriage. She further prayed that the petitioner be compelled to pay maintenance for the upkeep of the children of the marriage.

At the hearing of the petition, the petitioner and the respondent adduced evidence in support their respective cases. The petitioner reiterated the contents of his petition for divorce. He accused the respondent of deserting the matrimonial home without any justifiable cause. In her testimony before court, the respondent basically reiterated the contents of her cross-petition for divorce. This court has carefully considered the said evidence. It was clear to the court that the marital relationship of the petitioner and the respondent has not been a happy one. According to the petitioner, the difference between himself and the respondent was occasioned by the respondent's decision to desert matrimonial home without any reason. According to the respondent, the petitioner has over a long period of time when the couple were still living together, subjected her to physical assaults whenever she questioned him as to his extra marital affairs. It is apparent from the evidence adduced by the respondent that the petitioner continued having a relationship with his girlfriend known as V.M even after he got married to the respondent. The difference between the petitioner and the respondent appear to have been caused and acerbated whenever the issue of the relationship between the petitioner and the said V.M was being discussed. The final analysis, it is apparent that the petitioner opted to leave the respondent and move in with his long time girlfriend V.M. According to the respondent, the petitioner and his said girlfriend have now sired two (2) children. Taking into consideration the totality of the evidence adduced in this petition, it was clear to the court that the respondent established her cross-petition for divorce on the grounds of adultery. The petitioner admitted that indeed the said V.M has been his friend for a long time. The petitioner and the respondent have been separated for at least ten (10) years. It was clear to this court that the marriage between the petitioner and the respondent has irretrievably broken down. Both the petitioner and the respondent were categorical that there is no chance that they can be reconciled.

In the premises therefore, this court holds that the marriage between the petitioner and the respondent can no longer be sustained. It is hereby annulled. The marriage celebrated between the petitioner and the respondent on 11th August 1994 is hereby dissolved. Decree nisi dissolving the said marriage is hereby issued. The said decree nisi shall be made absolute thirty (30) days from the date of this judgment. Each

party shall bear their own costs. The issue regarding the custody and the maintenance of the children is no longer an issue that can be addressed by this court since all the children of the parties to this petition are over the age of eighteen (18) years. However, the respondent shall be at liberty to apply to the court for appropriate orders for the provision for the education of the children if the petitioner fails to provide the same. It is so ordered.

DATED AT NAIROBI THIS 17TH DAY OF NOVEMBER, 2010

**L. KIMARU
JUDGE**