

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
DIVORCE CAUSE NO.62 OF 2009

J. N.M.....PETITIONER

VERSUS

D.C. M.....1ST RESPONDENT

L.G.....2ND RESPONDENT

J U D G M E N T

The petitioner and the 1st respondent on 4th August 2004 married under the **Marriage Act** at the Registrar's office in Nairobi. After their marriage, the petitioner and the 1st respondent cohabited together as husband and wife at Eastleigh estate in Nairobi. The petitioner and the 1st respondent are blessed with two (2) issues, a son and daughter, born in respectively in 2004 and 2007. According to the petitioner, since the celebration of the said marriage, the 1st respondent has been guilty of the matrimonial offences of adultery and cruelty. The petitioner averred that the 1st respondent is engaged in an adulterous liaison with the 2nd respondent, which relationship has resulted in the birth of two (2) children. The petitioner avers that the 1st respondent had treated her with cruelty by physically and emotionally abusing her. The petitioner complained that the 1st respondent had failed to provide for the petitioner and the children of the marriage. She stated that the petitioner had been irresponsible by failing to perform his spousal duties and attend to his parental responsibilities. It was on account of all these complaints that the petitioner separated from the 1st respondent on 1st June 2008. Since then, the petitioner and the 1st respondent have been living apart. The petitioner prayed that the court dissolves the marriage between herself and the 1st respondent. She further prayed to be granted custody of the children of the marriage. She asked the court to order that the 1st respondent pays the sum of Kshs.20,000/- per month towards the maintenance of the petitioner and the children of the marriage. She further asked to be granted the costs of the petition. The respondents were served with the petition for divorce. They did not enter appearance within the requisite period. The petition for divorce was therefore undefended. During the hearing of the petition, this court heard oral evidence adduced by the petitioner. The petitioner basically reiterated the contents of her petition for divorce. She testified that the 1st respondent was guilty of adultery in that the petitioner was intimately relating to the 2nd respondent. The petitioner complained that the 1st respondent had abandoned her and failed to materially and emotionally provide for her and the children of the marriage. She recalled that due to the 1st respondent's behaviour, they were separated on 1st June 2008. She was of the view that the likelihood of their being reconciled was remote. After carefully evaluating this evidence, it was clear to the court that the marriage between the petitioner and the 1st respondent has irretrievably broken down with no possibility that it would be salvaged. The petitioner established that the respondents were living together in an adulterous relationship. She further established that the 1st respondent had treated her with cruelty by failing to materially provide for her and the children of the marriage. The petitioner and the 1st respondent have been separated for a period of more than two (2) years. It was apparent to this court that the petitioner and the 1st respondent no longer wish to live together and be considered as husband and wife.

In the premises therefore, this court will allow the petition for divorce. The marriage solemnized between the petitioner and the 1st respondent on 4th August 2004 at the Registrar's office in Nairobi is hereby annulled. *Decree nisi* is hereby issued dissolving the said marriage. The said *decree nisi* shall be made absolute thirty (30) days after the date of this judgment. As regard the issue of custody of the children and their maintenance thereof, this court advises the petitioner to file an appropriate case before the Children's Court which has jurisdiction in the first instance to deal with the issues. I will not make any orders as to costs.

DATED AT NAIROBI THIS 17TH DAY OF NOVEMBER, 2010

L. KIMARU
JUDGE