

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT ELDORET

DIVORCE CAUSE NO. 22 OF 2012

RKT.....PETITIONER

VERSUS

TC.....RESPONDENT

JUDGMENT

1. The petitioner (**RKT**) married **TC** (respondent) on 21st December 2007 at the Eldoret office of the Assistant Registrar General. They were eventually blessed with a son **LK** who was born on **19th June 2009**.
2. It is the petitioner's case that during the subsistence of the marriage, the respondent has been cruel to him on several occasions she would habitually desert the matrimonial home thereby causing the petitioner great mental anguish and even depression. She became a pathetic alcoholic, and engaged in infidelity, getting involved in several adulterous liaisons with other men both known and unknown to the petitioner. The result is that the union has broken down irretrievably.
3. Eventually the respondent deserted the matrimonial home on **12th January 2012**, and resisted all attempts of reconciliation. Ever since then the parties have lived in separation, and the petitioner has single handed raised their child- caring for him, paying his school fees, and catering for his education needs, meeting his medical expenses and other basic necessities.
4. The petitioner prays that this court does find that the marriage has broken down irretrievably, and dissolve it. Further, that custody of the child be given to him.
5. The matter proceeded as an undefended cause where the petitioner in his viva voce evidence stated that trouble in their union begun immediately after the birth of their child. According to the petitioner, the respondent became actively irresponsible and even denied him a chance to talk to their child.
6. He narrated how one time he went home un-announced at about 11.00pm as he was off-duty, only to find a man who was known to him in the house. He decided not to fight, but in the morning, sought audience with his and her parents. However, the respondent said she did not want to live with the petitioner any more, and she left the matrimonial home.
7. The Respondent left behind some photographs showing her at the beach in a swimming costume (which visit was made without the petitioner's knowledge). The petitioner was incensed at the thought that his wife posed half nude for photographs.
8. The respondent was opposed to the petitioner assisting his younger siblings by paying school fees, giving the petitioner an ultimatum to stop or she would leave. Due to her alcoholism, she neglected the child who became malnourished. At some point, the respondent declared that the petitioner had not sired the child and dared him to go for **DNA**.
9. The petitioner has no idea where the respondent lives, and the only time he reached out to her to attend the graduation of their son from pre-school to Std 1, she declined. He points out that they have lived apart for seven years, and the marriage has broken down irretrievably.
10. From what the petitioner has presented, it is apparent that the couple have no relationship to sustain. Even the child who would have kept them together has been left with the petitioner, and the petitioner seems totally disinterested in the milestones of his wife. Trust which is a key element in marriage has been broken down, with claims of open infidelity. I hold and find that the union has broken down irretrievably, and there isn't a scintilla of thread holding it. I order the union dissolved.
11. Since the minor has at least for the last seven years lived with the petitioner be maintained. Since the respondent has not shown any interest in the child, I do not consider it prudent to venture into her getting access to the minor, I find that it is in his best interest that the status quo remains to the extent that the petitioner is awarded custody of the child. Should the respondent feel inclined to bond with the child, then she is at liberty to make an appropriate application with detailed proposals of how she wishes the access to be achieved. Each party shall bear its own costs.

Delivered, Signed and Dated this 18th day of September 2019 at Eldoret.

H. A. OMONDI

JUDGE