



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MOMBASA
FAMILY DIVISION
DIVORCE CAUSE NO. 36 OF 2015 “B”

L O W PETITIONER

VERSUS

T N O..... RESPONDENT

JUDGMENT

1. L O W the Petitioner herein married T N O the Respondent herein on 15.6.09 at the Registrar’s Office in Mombasa. **They were issued with a marriage certificate.**
2. The Petitioner has filed the Petition herein dated 20.5.15 seeking the dissolution of his marriage to the Respondent. The ground upon which the Petitioner seeks divorce is cruelty, the particulars whereof are set out in paragraph 5 of the Petition. The Petitioner accuses the Respondent of causing him mental torture by cohabiting in Kisumu, Nairobi and Thika towns with several men while lying to him that she was visiting her parents. She failed to perform her role as wife and denied the Respondent conjugal rights. She also subjected him to verbal and physical abuse thus lowering the Respondent’s standing and respect in the eyes of his parents and friends. As a result of the conduct of the Respondent, the Petitioner claims that the marriage herein has irretrievably broken down.
3. The Respondent in her Answer to Petition denies all the allegations of cruelty and instead accuses the Petitioner of cruelty and adultery. She claimed that the Petitioner denied her conjugal rights and refused to provide for her and their children. She further alleges that the Petitioner consistently pricked quarrels with her leading to violent fights and outbursts. She accuses the Petitioner of engaging in illicit sexual relationships with unknown women and that he is currently cohabiting with another woman. She prayed that the Petition be dismissed with costs to her.
4. The Respondent though served, did not attend the hearing of the Petition. The Court was therefore unable to test the veracity of her claims in the Answer to Petition.
5. In his uncontroverted testimony in support of his Petition, the Petitioner who is a customer service agent with [Particulars Withheld] states that he got married to the Respondent on 15.6.09 at the Registrar’s office in Mombasa. **Following the marriage, the couple cohabited in [Particulars Withheld] until 2012 and then moved to [Particulars Withheld] near [Particulars Withheld]. The marriage is blessed with 2 children N W born on 20.9.09 and L W born on 4.3.11.**
6. **By 2012**, the marriage was under strain. He claimed that he suffered inhuman and degrading treatment at the hand of the Respondent. This included the Respondent hitting the Petitioner with her undergarments or patting her inner thighs with her hands and telling him that she would not sleep with

him, which is taboo in his culture. He stated that she would throw things around the house and then go to the balcony and start yelling. That as a result of this mental torture, the Petitioner began to have suicidal thoughts. In August 2014, he moved out of the house as he felt he was unable to control his anger any more. He is presently cohabiting with another woman and they have a child, N W together. He prayed that the marriage be dissolved.

7. I have considered the Petition and the uncontroverted testimony of the Petitioner. The Marriage Act, 2014 at Section 66(2) stipulates that cruelty is one of the grounds upon which a civil marriage such as the marriage herein may be dissolved. It provides as follows:

- (a) adultery by the other spouse;***
- (b) cruelty by the other spouse;***
- (c) exceptional depravity by the other spouse;***
- (d) desertion by the other spouse for at least three years; or***
- (e) the irretrievable breakdown of the marriage”***

8. The Petitioner seeks dissolution of the marriage on the ground of cruelty. He testified that the Respondent subjected him to mental torture by violent conduct and further doing things to him that are taboo in his culture. I have no reason to doubt that the Petitioner suffered mental anguish as a result of the conduct of the Respondent. I am therefore satisfied that the ground of cruelty has been established.

9. From the testimony of the Petitioner, it would appear that there is no hope for the marriage herein. The Petitioner himself is cohabiting with another woman with whom he has a child. This in itself is a ground for divorce. This marriage has irretrievably broken down. Consequently I do pronounce a decree of divorce and order that the marriage between the Petitioner and the Respondent **solemnized on 15.6.09** at the Registrar’s Office in Mombasa be and is hereby dissolved. Decree *nisi* to issue and the same to be made absolute within 1 month.

DATED, SIGNED and DELIVERED in MOMBASA this 10th day of March 2017

M. THANDE

JUDGE

In the presence of: -

..... **for the Petitioner**

.....**for the Respondent**

.....**Court Assistant**