

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI

MILIMANI LAW COURTS (FAMILY DIVISION)

DIVORCE CAUSE NO. 20 OF 2014

S M N.....PETITIONER

AND

J N M.....RESPONDENT

JUDGMENT

1. S M N then a spinster, lawfully married J N M, then a bachelor (hereinafter the respondent) at the Attorney General's Office in Nairobi on the 21st day of November 2003. After the aforesaid marriage the petitioner and the respondent lived and cohabited together as husband and wife at Komorock estate. There are two (2) issues of marriage namely; M M born 29th January 2004 and J M born 22nd September 2008. The petitioner and the respondent at the institution of petition are resident in Kenya and both domiciled in the republic of Kenya. The petitioner alleges that the respondent is a mean, paranoid and violet man who has since the celebration of the said marriage, treated the petitioner with cruelty, inflicting on her pain, anguish misery.
2. She particularized cruelty that the Respondent has during the subsistence of the aforesaid marriage shown total contempt toward the marriage, has been cold, passive and withdrawn towards the petitioner with the consequence that has been lack of matrimonial love and commitment on his part in the marriage thus occasioning the respondent unnecessary mental anguish. That the respondent has no occasions too many to enumerate abandoned his responsibilities in the matrimonial home and does not bother to even manage the domestic budget. He is a man of ungoverned and erratic behavior. That the respondent has treated the petitioner with disrespect and contempt and has continually used overly abusive language towards the petitioner in both private and public places and does so in a very disrespect way in total disregard of the petitioner's feelings, views, dignity and achievement. That the respondent has repeatedly verbally abused and quarreled the petitioner with the quarrels and abuses stretching for days including nights causing the petitioner to have difficulty concentrating at work due to lack of sleep, fatigue and mental anguish. That the respondent has caused the petitioner to suffer immeasurably causing severe stress both physically and emotionally due to him attitude, constant mistreatment and utterly irresponsible behavior. The petitioner and respondent have lived apart for more than 5 years since 24th September 2008 after the respondent rejected all efforts of mediation and reconciliation. These issues have led the marriage between the petitioner and the respondent has irretrievably breakdown. The petitioner prays for orders that the marriage between the petitioner and the respondent be dissolved, she be granted custody of the issues of the marriage and the respondent be condemned to costs of this cause.
3. The respondent filed an answer to the said petition on 1st April 2014 and denies petitioners allegations of cruelty and in return blamed the petitioner for being non receptive to the marriage which caused the marriage to irretrievably break down. He stated that differences emerged due to religion differences and the petitioner denying the respondent rights to name the children. That the petitioner wanted to baptize the children at Gospel Church at Mfangano while the respondent professes catholic faith. He alleges that during the subsistence of the marriage the petitioner has exposed the respondent to cruelty and desertion and particularized cruelty as; that the petitioner abandoned the respondent when she moved out of the matrimonial home on 28th September 2008 therefore failing to perform her marital obligation to provide the respondent with conjugal rights.

- That having left with the children she denied him rights to bond with his children. That the respondent during the subsistence of the marriage gave away items purchased by the respondent without his knowledge or consent. That the petitioner was disrespectful, high tempered and treated the respondent with disdain. That his efforts to reconcile even sending relative delegations to his home. He states that despite the petitioner desertion he continues to provide for the upkeep of the children paying their school fees, buying their clothes, books and entertainment and has access to the children on weekends. The respondent believes that the marriage between him and the respondent can be salvaged and prays that the parties engage in reconciliation and that he and the petitioner be granted joint custody of the minors.
4. The matter came up for hearing on 3/12/2015. The petitioner reiterated the averments of her petition. She stated that she got married to the respondent on 21/11/03 and have 2 issues of the marriage. That they have not lived together as husband and wife for over 7 years. She stated that the respondent was abusive and was not co-operative with the financial needs of the home. That the respondent had threatened to kill her if she left him and also alleged that J was not his child. That she named the said child after her mother and the parties separated for 3 months in 2007 and although the respondent promised to change he used to drink daily and did not change adding that when she left the respondent destroyed her KCPE, birth and college certificates. She refutes claims that the respondent sent any delegates to her home to try and reconcile the parties. She testified that there was no chance of reconciling with the respondent.
 5. The respondent in his testimony reiterated the averments in his reply and cross petition and stated that the petitioner did not return to their home after the birth of their 2nd child J. He stated that they belonged to different churches and since they had not agreed on which church to go the father would pick her every Sunday they go to church together. He however states that they have talked with the petitioner and have forgiven each other. That the petitioner's father took her away and he got a police abstract after the respondent's father blocked him from seeing the children. He admits that at some point when the petitioner was staying at her father's house he could not provide for the children but that was because he had no job for about 3 months but he resumed after he got a job. He denied saying that the 2nd child was not his. He told the court he does not want a divorce and requested the court more time to send his parents to the petitioner's home in a bid of reconciliation with the petitioner. He pointed out that he was a recovering alcoholic and apologized to the family.
 6. The parties have in their evidence admitted to having been separated for over 5 years. They both raised issues of cruelty against one another. The petitioner has admitted to abandoning the matrimonial home while the respondent has admitted of being a recovering alcoholic. The respondent is opposed to the divorce and urges the court to give the parties time to try reconciliation with the two families. It is however evident that the marriage between the petitioner and the respondent has irretrievably broken down. The petitioner and respondent narrated incidents of cruelty. The petitioner also admits deserting the matrimonial home on 28th September 2008. Cruelty and desertion are grounds provided for under the Matrimonial Causes Act Cap 152 (now repealed) and also the Marriage Act 2014. It appears that there is no possibility of reconciliation though I note that the parties are now on talking terms, however the marriage they had has irretrievably broken down. There is no love between them to sustain the marriage plus they have been apart for 5 years. I therefore dissolve the marriage between the petitioner and the respondent that was celebrated at the Nairobi Office on 21st November, 2003. The petitioner seeks custody of the children of the marriage while the respondent proposes joint custody of the children; parties shall pursue this latter issue before the Children Court. The no orders as to costs. It is so ordered.

Dated signed and delivered this 5th Day of *February* 2016.

R. E. OUGO

JUDGE

In the presence of:

.....**Petitioner**

.....**Respondent**

.....**Court Clerk**