



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

DIVORCE CAUSE NO. 119 OF 2015

BETWEEN

S M M.....PETITIONER

VERSUS

F I K.....RESPONDENT

JUDGMENT

1. On 5th January 1993, S M M hereinafter the Petitioner, then a spinster, was lawfully married to F I K hereinafter the Respondent then a bachelor and a certificate Serial No. [particulars withheld] issued to them in accordance with the **Magistrate Act Cap 150 Laws of Kenya**. The marriage was celebrated at the Registrar's Office in Nairobi and thereafter they cohabited as husband and wife in various places in Nairobi, Malindi and Mombasa in Kenya, as well as Kasese, Lugazi and Kampala in Uganda. The couple was blessed with two issues of the marriage, who were aged as follows at the time of filing Petition.

i) A K I born on 10th May 1992

ii) K W I born on 10th March, 1995.

2. At the time of the filing of the petition both the Petitioner and the Respondent were domiciled in Kenya where the Petitioner works as a Civil Servant and the Respondent works as an interior designer.

3. The Petition filed on 25th, August 2016 is premised on grounds of cruelty and adultery said to have been occasioned by the Respondent against the Petitioner. Upon being served with the process, the Respondent filed an Answer to the Petition and a cross-petition, calling the Petitioner to strict proof thereof.

4. On 22nd September, 2016 the Deputy Registrar certified that the matter was suitable to proceed for hearing as a defended cause for one day in Nairobi. At the hearing on 24th November, 2016 the Petitioner stated that attempts at reconciliation had failed. She asked the court to adopt the petition as her evidence, the petition in which she had set out the particulars of cruelty. The Respondent did not take the stand but his Answer to the Petition and the Cross-Petition were also adopted in the evidence, by the consent of the parties.

5. With regards to the acts of cruelty, the Petitioner accused the Respondent of having caused her grave mental anguish and trauma by his constant quarrelling, repeated physical abuse in the presence of their children and by stalking and embarrassing her in front of her workmates. According to the Petitioner the Respondent has stripped her of her dignity and her self-esteem by incessantly abusing, belittling and

demeaning her.

6. On the acts of adultery, the Petitioner complained that in three different instances the Respondent admitted to having committed adultery and put the blame on the Petitioner. That the Respondent has since taken another woman with whom he cohabits in Nairobi as husband and wife, and with whom they have sired three children. That the Respondent has further sired another child with a different woman.

7. The Petitioner also complained that the Respondent forced her out of the matrimonial home and as a result, she returned to their matrimonial home in Mombasa in March, 2003. That since then she has never cohabited with the Respondent.

8. In his Answer to the Petition and Cross-Petition, the Respondent denied the allegations on cruelty and adultery. He stated that the Petitioner had, during the subsistence of the marriage, treated him with disrespect and had on various occasions openly attacked the self-esteem of the Respondent. He accused the Petitioner of adultery, and that when confronted, the Petitioner stated that she was on a 'revenge mission' out of jealousy that the Respondent was also being adulterous.

9. The Respondent contended that the Petitioner deserted the matrimonial home in 2003 to cohabit with a man with whom she sired a child in 2005. That ever since the Petitioner deserted the matrimonial home, the Respondent has been living with the two issues of the marriage who have now finished their University education. He prayed that the marriage between him and the Petitioner be dissolved and he be granted custody of the two issues of the marriage.

10. I have perused the grounds of the Petition, the Answer thereto and the grounds of the Cross-petition. What is not disputed is that the marriage between the two parties broke down more than a decade ago. The parties have since lived apart for the last thirteen years and there seems to have been no attempt at reconciliation by either side. It is also clear that there are irreconcilable differences between them and both parties want the marriage celebrated between them to be dissolved.

11. The parties confirm that this Petition has not been presented or prosecuted in collusion, neither have they connived or condoned the matrimonial offences which each has complained of. They both certify that there have been no previous proceedings filed regarding the marriage.

12. From the foregoing I make a finding that due to the matrimonial offences set out above and which have been proved on either side on a balance of probabilities, the marriage between this two parties remains in-existence on paper only. The marriage celebrated between the parties herein on 5th January, 1993 has broken down irretrievably and cannot be salvaged. At least, there is no will on either side to salvage it.

13. The Respondent prayed for the custody of the issues of the marriage. Matters of the custody of the children should be ventilated in the Children's court. In any case the children adverted to in this cause have attained the age of majority and therefore, the issue of custody does not arise.

14. Reasons wherefore I make the following orders:

(a) That the marriage celebrated between the Petitioner and Respondent at the Registrar's Office in Nairobi on 5th January, 1993 is hereby dissolved.

(b) That Decree nisi dissolving the said marriage is hereby issued to be made absolute thirty (30) days from the date of this judgment.

(c) That matters concerning the custody of the child of the marriage shall be determined by the Children's Court.

(d) There shall be no orders as to costs.

SIGNED DATED and DELIVERED in open court this **8th** day of **December, 2016**.

.....

L. A. ACHODE

JUDGE

In the presence ofAdvocate for the Petitioner

In the presence ofAdvocate for the Respondent