



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

DIVORCE CAUSE NO. 135 OF 2010

L.C.....PETITIONER

VERSUS

M.M.....RESPONDENT

J U D G M E N T

By a petition dated 8th October 2010 and filed in court on 27th October 2010, the Petitioner sought orders from this court to be divorced from the Respondent. According to the said petition, the Petitioner and the Respondent were married on 30th October 2009 at the Registrar's Office in Nairobi. The marriage was celebrated under the Marriage Act. The marriage has not been blessed with any children. According to the Petitioner, the Respondent had since the celebration of the said marriage treated her with cruelty.

It is for this reason that the Petitioner urged the court to dissolve the marriage.

The Respondent was duly served with a copy of the petition for divorce together with notice requiring him to enter appearance. He however did not enter appearance. Neither did he file any papers in opposition to the petition for divorce. By an application dated 8th December 2011 and filed in court on 20th December 2011 the Petitioner sought an order that the court certifies that the pleadings in this cause were in order and that the court gives directions as to the hearing of the divorce cause. Consequently, the Deputy Registrar of this court issued a certificate certifying that the proceedings herein continue as an undefended divorce cause.

It is noted that the petition herein was filed one (1) year since the marriage between the Petitioner and the Respondent was celebrated. **Section 6** of the **Matrimonial Causes Act (Cap. 152) (now repealed)** states that no petition for divorce shall be presented to court unless at the date of the presentation of the petition three (3) years have lapsed since the date of celebration of the marriage. **Rule 2** of the **Matrimonial Causes Rules** envisages the grant of leave to file a petition before the expiry of three (3) years by providing for the filing of an application for leave to present a petition for divorce before the expiry of three years since the celebration of the marriage.

The instant divorce cause was filed on 27th October 2010. The Petitioner and the Respondent celebrated their marriage on 30th October 2009. Leave to present the petition before the expiry of three years since the celebration of the marriage was not obtained. However in view of the lapse of time; from 2010 to 2015 the petition can be heard and determined as 3 years have lapsed the marriage was contract.

On 11th February, 2014 L. W. K testified in Court and expanded on the details particularized in the petition of 8th October, 2010. She confirmed that she and the Respondent solemnized their marriage on

30th October, 2009.

During the wedding day, after she had prepared for the wedding, the Respondent brought 2 of the children to the wedding with their mother when she asked him he refused to talk about the matter.

After the wedding, she was very upset about the Respondent lies that he did not have another family; he lied about his financial status; he asked her to foot the wedding expenses and claims he was to reimburse her once the loan he applied for went through. For the time they lived together, he would withdraw and did not talk and he dressed in heavy clothes. He was depressed and she was stressed.

After one (1) week of living together she was miserable and she left for the United Kingdom where she came from. He did not contact or talk to her and she said that the marriage had irretrievably broken down. She decided to apply for divorce after the marriage as no likelihood of reconciliation as they parted almost immediately after the wedding and have not been together to date. The Court found that Respondent was served with the petition the Respondent did not file an Answer to petition or Cross Petition.

The evidence adduced by the petition and as particularized in paragraph 7 the particulars of cruelty remain uncontroverted. In the absence of any evidence to controvert the evidence of the petitioner, the Court finds that the Petitioner has proved physical and emotional cruelty by the respondent. There is no likelihood of reconciliation as the parties have been apart since 2009 as provided by **Section 66 of the Marriage Act 2014**.

The Court orders;

- a. The marriage solemnized between the petitioner and Respondent on 30th October, 2009 is hereby dissolved
- b. A decree nisi to issue forthwith
- c. A decree absolute to issue in 6 months
- d. Each party to bear its own costs.

DELIVERED, SIGNED AND DATED AT NAIROBI THIS 5TH DAY OF FEBRUARY , 2015

M. MUIGAI

JUDGE

In the presence of:

Counselfor the Petitioner

Counselfor the Respondent