



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

DIVORCE CAUSE NO. 89 OF 2012

BETWEEN

B A N.....PETITIONER

AND

B W N.....RESPONDENT

JUDGEMENT

1. Marriage was celebrated between the parties herein on 18th July 1998 at the Consolata Church, Nairobi, Kenya. A certificate of marriage serial number *[particulars withheld]* was duly issued to them in accordance with the Marriage Act. The couple thereafter cohabited at Kyuna and New Runda Nairobi, as husband and wife. They were blessed with issue, two children – T P N (born 25th January 2001) and T A N (born 20th October 2004).

2. The petition in this matter was filed in court on 17th February 2013. The petitioner seeks dissolution of the marriage and custody of the children. Dissolution is sought on the grounds of cruelty and adultery.

3. The particulars of cruelty are that the respondent is a lazy or idle person who though educated does not take up any economic activity, she leads an extravagant lifestyle which he has no means of supporting, neglecting the children of the marriage and failing to discharge her duties as mother, isolating herself from the respondent and the children by locking herself in her room for long periods of time, keeping the petitioner's mother and the children's grandmother away from the matrimonial home, throwing away gifts bought for the children by the petitioner's mother, among others.

4. On adultery is pleaded that the respondent has harassed molested and coerced the family driver into having a sexual relationship with her, and she has brought men into the matrimonial home in the absence of the petitioner and spent nights there with her.

5. The respondent was served with the divorce papers. She entered appearance on 15th June 2012 and filed an answer to the petition and cross-petition on 4th July 2012. In her answer, she denies the allegations levelled against her by the petitioner. She cross-petitions for dissolution of the marriage, maintenance and alimony. Her cross-petition is predicated on the grounds of cruelty, adultery and desertion.

6. The particulars of cruelty are that the petitioner insists of picking the children from school and taking them to an environment which is not conducive for them to do their homework, forcing the children to

live with the co-respondent, scheming to remove the children to Slovenia, allowing his mother to patronise over the respondent and to interfere with her authority over the household, allowing her mother to feed the children with junk food, engaging the house helps intimately in the midst of the respondent and the children, denying her conjugal rights, among others.

7. Regarding desertion, it is pleaded that the petitioner deserted the matrimonial home sometime in October 2011 never to come back. He is said to have stayed away from the respondent since then. The grounds of divorce are that the petitioner has committed adultery with various house helps, has committed adultery with a person named as S M at Nondies Club and H N T with whom he cohabits with at Jade Valley, Nairobi, she has named the said H N T as a co-respondent.

8. She pleads that all efforts to reconcile the parties have failed and as a consequence of the cats complained of the marriage has irretrievably broken down.

9. The parties by a consent recorded in open court on 18th October 2012 before Mugo J conceded to the matter proceeding as a defended cause.

10. The cause was heard on 27th November 2014. Both parties testified, giving vent to the allegations made in their respective pleadings. I am satisfied from the material placed before me that the marriage between them has for all purposes ended, irretrievably broken down. It cannot be salvaged and no reconciliation is feasible. I note too that both parties have petitioned for dissolution of the marriage. It would also appear to me that there has been no collusion between the petitioner and the respondent in the bringing of these proceedings.

11. On alimony and maintenance, I note that consent orders were recorded on 20th December 2012, where the petitioner was to pay to the respondent a monthly alimony pending the hearing and determination of this cause. He stated at the trial that he was leaving it to the court to determine wither to enhance the amount or not. The respondent asked the court to enhance the amount to Kshs. 350,000.00. I note from the testimony of the respondent that she did not place any material before me to justify the enhancement of the amount of monthly maintenance from Kshs 100, 000.00 to Kshs. 350, 000.00. I have therefore no material before me to order such enhancement.

12. I note that the parties are litigating elsewhere on issues touching on the children of the marriage. The Children's Court is properly vested with jurisdiction over such matters and this court will not in the circumstances strain its mind on the question of custody of the children.

13. In the end I will make the following orders: -

- (a) That I hereby order dissolution of the marriage celebrated between the petitioner and respondent on 18th July 1998;
- (b) That decree *nisi* shall issue forthwith, to be made absolute after thirty (30) days;
- (c) That the petitioner shall continue to provide the respondent with monthly maintenance at the rate of Kshs. 100, 000.00, but there shall be liberty to apply; and
- (d) That there will be no orders as to costs.

DATED, SIGNED and DELIVERED at NAIROBI this 6th DAY OF March 2015.

W. MUSYOKA

JUDGE