



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**DIVORCE CAUSE NO. 34 OF 2013**

**J N B.....PETITIONER**

**VERSUS**

**W W W .....RESPONDENT**

**JUDGMENT**

1. The petitioner filed a petition on 8<sup>th</sup> February 2013 seeking orders that the marriage between her (the Petitioner) and the Respondent be dissolved and that she be granted custody of the child of the marriage.
2. The respondent filed a response seeking orders that the marriage between himself and the petitioner be dissolved on the grounds pleaded by the respondent in the cross petition.
3. The parties got married on 9<sup>th</sup> October 2009 at the office of the Registrar of Marriages at Nairobi and were issued with a marriage certificate serial No. *[particulars withheld]*. The petitioner states that after the celebration of the marriage they cohabited in Nyayo Estate, Embakasi but the husband would work and live in Dubai. On one occasion she called his phone, a lady received the phone call and passed the phone to the Respondent who hanged up the phone. She states that the respondent committed adultery and that on one occasion when she had visited the respondent in Dubai a lady by the name N came over to the respondent's house and rang the bell continuously asking him to open the door, but he refused to open the door.
4. The petitioner also told the court that the respondent displayed unwarned coldness towards her by refusing to see her at his house while in Dubai preferring instead to see her in a hotel; that the respondent would not visit Kenya, and the matrimonial home unless she sent him an air ticket; that he has denied her conjugal rights. It was her testimony that she and the respondent have not been man and wife since 2011. The petitioner sought to involve the respondent's parents with an aim of sorting out their issues but the same collapsed when the lady called N sent her an email implying that she was a girlfriend to the respondent and had visited him in Dubai on various occasions and committed adultery with him. The respondent's parents were un co-operative. In 2012 her daughter was diagnosed with asthma and the respondent did not assist her and had since stopped providing for and communicating with them despite the petitioners efforts to communicate with him.
5. She has sought the dissolution of the marriage on grounds of adultery and desertion and also sought maintenance for their child.
6. The respondent in his answer to the petition filed a cross petition and particularized the

petitioner's adultery and cruelty as follows;

- i. That the petitioner committed adultery with a certain O D a Nigerian and G a Congolese national and has denied the respondent conjugal rights when demanded.
  - ii. That she has treated the respondent with cruelty and ridicule as a result of which he has suffered emotional liability mental distress and has been ridiculed in the eyes of his family and friends and as such cannot be expected to cohabit with the respondent as a husband and wife.
7. The petitioner sought that he be given custody of the child of the marriage L A W. He also seeks the marriage to be dissolved and that a plot of land and motor vehicle registered in the petitioner's name be sold and the proceeds be divided between them.
  8. The petitioner's evidence was not challenged. The Respondent deserted their matrimonial home in 2011 and has not returned since then. The petitioner has made attempts to resolve the issues between them but the same has not yielded any fruits. It is evident that there is no possibility of reconciliation and the marriage has irretrievably broken down. Section 8 of the Matrimonial Act (now repealed) outlines grounds of divorce. One of the grounds is desertion. Section 8 (b) provides that a petition for divorce may be presented to the court by either party on grounds of adultery and that the respondent has deserted the petitioner without cause for a period of least 3 years immediately preceding the presentation of the petition. The petitioner has in no way condoned the respondent's cruelty nor is this petition is presented or prosecuted in collusion with the Respondent. This court therefore dissolves the marriage between the Petitioner and the Respondent celebrated on the 9th October 2009. I dismiss the respondent's cross petition as it was not defended.
  9. The petitioner shall have custody of the child of the marriage **L A W**. The petitioner did not adduce sufficient evidence on maintenance; she can follow up on the same from the children's Court with proper documentation on the requirements of the child. A decree nisi to issue forthwith and to made absolute within 30 days. Each party to bear its own costs. It is so ordered.

Signed, dated and delivered this **6<sup>th</sup>** Day of **March** 2015.

**R. E. OUGO**

**JUDGE**

In the presence of:

.....**Petitioner**

.....**Respondent**

.....**Court Clerk**