



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

DIVORCE CAUSE NO. 35 OF 2012

BETWEEN

A M MPETITIONER

AND

M W M.....RESPONDENT

JUDGEMENT

1. On 29th November 2009, the Petitioner, then a bachelor known as A M M, was lawfully married to the Respondent M W C then a spinster and a certificate Serial No. *[particulars withheld]* issued to them in accordance with the **Marriage Act 1949 Laws of England**. The marriage was celebrated at the Registrar's office in the District of Southwark, London Borough of Southwark and thereafter they cohabited as husband and wife in London and then in Nairobi at Kahawa Sukari. They were blessed with five issues of the marriage, who were aged as follows at the time of filing Petition.

- a. F N aged 12 years
- b. J M aged 6 years
- c. P C aged 3 years
- d. S G two years
- e. T N aged 1 year

2. Both the Petitioner and Respondent are domiciled in Kenya where the Petitioner is a businessman. The Respondent's occupation was not disclosed.

3. The Petition was filed on 1st March 2012 and is premised on a litany of grounds of cruelty. The acts of cruelty set out are that since the celebration of the marriage, the Respondent has denied the Petitioner conjugal rights; has been hostile to the Petitioner rendering the usual family relations unbearable; has subsequently abandoned and absconded from the matrimonial home together with the issues of the marriage; has on several occasions, verbally and physically abused and used abusive language to the Petitioner in the presence of their children; is of ungovernable and uncontrolled temperament and has failed to provide for the family.

4. Other matrimonial offences the Respondent is accused of are that after abandoning the matrimonial home, the Respondent reported to the police that their matrimonial home had been raided by armed robbers so as to cause the Petitioner to be shot and possibly killed.; that she has denied the petitioner access to their joint income and assets, and to the issues of the marriage; that between 25th and 28th April 2010 the Respondent locked out the Petitioner from the matrimonial house and changed the locks thereto forcing the Petitioner to spend the night in the cold resulting to sickness. The Petitioner asserts that the

Respondent refused to attend to important family matters; is rude to the family members and friends and incites the issues of the marriage and the workers against the Petitioner. This, the petitioner states has caused him mental anguish and distress.

5. The Petition is supported by the Petitioner's affidavit sworn on 10th February 2012 in which he reiterates the contents of his Petition. He therefore prays that the marriage celebrated between him and the Respondent be dissolved, and that he be granted the custody of the issues of the marriage.

6. On 14th May 2012, the Respondent was served with the Petition and she filed an Answer to the Petition dated 30th May 2012, in which she denies ever treating the Petitioner with cruelty. The Respondent states that the Petitioner had an uncontrolled sex drive that was almost hard to cope with. That he is verbally and physically abusive and bad tempered and he does not maintain the family. That she made a report to the police because two of her children were missing from her house, but the police later found out that the Petitioner had taken the boys without informing the Respondent.

7. The Respondent further states that the issues of the marriage are afraid of the Petitioner, since they have been witnessing the physical abuse the Respondent has been subjected to. She denies that the Petitioner has ever organised a family meeting for reconciliation purposes and that in fact, the Petitioner refused to attend reconciliatory meetings arranged by the family members and village elders. The Respondent asserts that the Petitioner refused to go for counselling and that what caused the marriage to break down was his assaulting her, the misuse of family funds and the constant family feuds.

8. On 11th April 2013, the Deputy Registrar certified that the matter was suitable to proceed for hearing as a defended cause for one day in Nairobi. On 30th April 2015, the Petitioner adopted his petition in evidence. Both the Petitioner and the Respondent confirm that this Petition and cross-petition have not been presented or prosecuted in collusion with one another, nor have they connived or condoned the acts of cruelty which each has complained of. They also certify that there have been no previous proceedings filed regarding the marriage.

9. The Petitioner prays that the marriage be dissolved, while the Respondent prays that the petition be dismissed and both parties be given time to reconcile the differences that have risen in the marriage. The Respondent prays that the matrimonial properties and assets be divided equally between the two parties considering the issues of marriage. She also prays that the custody of the minors be awarded to the Respondent and that all family members of the Petitioner be evicted from the Petitioner and Respondent's matrimonial properties.

10. The Respondent was served but did not appear in court. Learned Counsel for the Petitioner, Mr. Musyoki informed the court that they did not wish to call any witnesses and that they would not make any submissions since their Petition was clear.

11. This court has carefully considered the facts of this case and it is clear that the marriage between the Petitioner and Respondent has irretrievably broken down with no possibility of salvage. The Petitioner and Respondent are no longer living together and are agreed that attempts at reconciliation have borne no fruit. The Respondent did not attend court to defend the marriage if it is her view that it can be saved. The court is of the view that the matrimonial offence of cruelty has been proved on a balance of probabilities and that there is no collusion between the Petitioner and Respondent in bringing this proceedings. This court will grant the petition for divorce. In view of the foregoing this court makes orders as hereunder:

- a. That the marriage celebrated between the Petitioner and the Respondent at the Registrar's office in the District of Southwark, London Borough of Southwark on 29th November 2009 is hereby dissolved.
- b. 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 and maintenance of the issues 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 **7th day of May 2015.**

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L. A. ACHODE

JUDGE

In the presence ofAdvocate for the Petitioner

In the presence ofAdvocate for the Respondent