



**REPUBLIC OF KENYA**

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

**DIVORCE CAUSE NO. 145 OF 2014**

**A N N.....PETITIONER**

**VERSUS**

**H N M..... RESPONDENT**

**JUDGMENT**

1. The petitioner and respondent got married on 7<sup>th</sup> May 2010 at the Attorney General's Chambers in Nairobi and were issued with marriage certificate number [particulars withheld]. The parties cohabited together as husband and wife in Nairobi, Kenya. The petitioner seeks the dissolution of the marriage on grounds of cruelty, infidelity, and desertion.
2. The petitioner on grounds of cruelty alleges that the respondent has been cruel and hostile and treated the petitioner in a hostile abusive and violent manner and at times the same deteriorated to him beating her up. He is of varying temperament, quarrelsome, moody and hot tempered and uses derogatory and abusive language against the petitioner causing her mental pain, anguish and psychological trauma.
3. That the respondent abdicated his duty to provide for the petitioner both financial and conjugal rights and has refused to discuss the ailing marriage has been distant and uncaring towards the petitioner.
4. The petitioner alleges that the respondent was prone to extra marital affairs with other women unknown to her all these she argues have led to their marriage to irretrievably break down.
5. The respondent in his reply and cross petition filed on 18<sup>th</sup> August 2014. He pointed out that the petitioner had filed another divorce petition on 11<sup>th</sup> May 2013 at Milimani Law courts and another at Milimani commercial court on 15<sup>th</sup> January 2014. He denied the allegations that he deserted the petitioner stating that the petitioner is the one who deserted him on 26<sup>th</sup> December 2010 and went to her parent's home in Molo and never returned to the matrimonial home. He blames the petitioner for not agreeing to get a baby with him or seek medical intervention issue he says brought strain in their marriage. That when she deserted him she abdicated her duties as a wife and this caused him deep grief, pain, and psychological trauma.
6. He admitted to having slapped the petitioner in January 2007 when he found a text message on her phone asking to re-unite with her former husband D G, she had gone and cohabited with him for 3 months but the parties reconciled and decided to forgive each other. He added that the same should not be raised now as they had already forgiven each other. He avers that he has been faithful to the petitioner throughout that the text message the petitioner sent to him on 8<sup>th</sup> August 2011 confirms that she only suspected him of infidelity but she never communicated to him about her suspicion. That when the petitioner went home she lied to her parents that he wanted to kill her. He admits that the marriage has irretrievably broken down and seeks that the same is dissolved.
7. The petitioner alleges cruelty, infidelity and adultery as her grounds for divorce. Cruelty,

infidelity, and desertion are grounds for divorce provided for under the Marriage Act 2014. The petitioner alleges that the respondent was cruel to her and he verbally and physically abused her. The respondent on his part admits to having slapped the petitioner on one occasion In the case of *N v N (2008) (G& F) Madan J* (as he then was) held, inter alia, that;

***“Whether cruelty as a matrimonial offence has been established is a question of fact and degree which should be determined by taking into account the particular individuals concerned and the particular circumstances of the case rather than by any objective standard.”***

It appears that the petitioner and respondent has issues in their marriage that led to physical abuse as a result the petitioner left the matrimonial home. The petitioner has proved her ground of cruelty. The petitioner explained why she withdrew the petition that was filed before this one.

8. The petitioner alleges that the respondent was involved in extra-marital affairs during their marriage other than suspicion I find that the petitioner has not adduced any evidence to prove adultery on the respondent’s part and as such, her ground on infidelity fails. The respondent denies deserting the petitioner claiming that it was indeed the petitioner who left the matrimonial home and went to her parent’s home in Molo. The petitioner in her testimony in court admitted to having deserted the matrimonial home 7 months into the marriage claiming that the same was due to the respondent’s cruelty and verbal and physical abuse. She also stated that she did not want any reconciliation with the respondent. From the foregoing, it is evident that the petitioner is indeed the one that deserted the respondent and as such, her ground on desertion fails. In this regards the respondent’s cross-petition on grounds of desertion succeeds. From the foregoing, it is evident that the marriage between the parties has irretrievably broken down and there is no possibility of reconciliation. This court therefore dissolves the marriage between the Petitioner and the Respondent celebrated on 7<sup>th</sup> May 2010. A decree nisi to issue forthwith and to be made absolute within 30 days. Each party to bear its own costs. It is so ordered.

Dated, signed and delivered this 5<sup>th</sup> day of *November* 2015.

**R. E. OUGO**

**JUDGE**

In the presence of:-

.....**For the Petitioner**

.....**For the Respondent**

**Ms. Charity Court Clerk**