

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

DIVORCE CAUSE NO. 167 OF 2011

BETWEEN

J S M.....PETITIONER

AND

D I S.....RESPONDENT

JUDGEMENT

1. Marriage was celebrated between the parties herein on 19th February 2003 at the office of the Registrar of Marriages in Nairobi. A certificate of marriage, serial number *[particulars withheld]*, was issued to them in accordance with the Marriage Act. The parties thereafter resided at various addresses in Nairobi. The couple was not blessed with issue.
2. The petition in this matter was filed in court on 19th October 2013. The petitioner accuses the respondent of cruelty, adultery and desertion. She is said to have generally adopted a cool and hostile manner towards him during the course of the marriage, used rude and demeaning language while speaking to the petitioner, maintained a secretive and clandestine approach to life thereby making it difficult for the petitioner to trust her, was fond of excessive merry-making which meant she was out of the matrimonial home most times, treated the petitioner maliciously by needlessly reporting him to his employer with a view to have him dismissed from his job, repeatedly tarnishing the name of the petitioner in the eyes of his employer by her malicious reports, among others.
3. On adultery, he alleges that in 2000 the respondent was living at Goma in the Democratic Republic of Congo with a boyfriend, in 2004 she had an affair with a chief security officer whom she had given a set of keys to the matrimonial home at a time when the petitioner was based elsewhere, she had an affair with her immediate boss which exposed the petitioner to ridicule, and she was fond of men and she kept moving from one man to the next.
4. On desertion, it is pleaded that in 2005 the respondent declared to the petitioner that their marriage was over. He urges that the marriage has for all purposes irretrievably broken down.
5. The petitioner prays for dissolution of the marriage.
6. The respondent replied to the petition by way of answer to the petition and cross-petition dated 17th October 2013. Save for the marriage, the respondent denies all the other allegations of fact pleaded in the petition, inclusive of the particulars of cruelty, adultery and desertion. She accuses the petitioner of having been the one cruel towards her and of deserting the matrimonial home.
7. She cross-petitions for dissolution of the marriage on the grounds that the same has irretrievably broken down and has become a sham devoid of any feelings, love and affection. She pleads that the petitioner has stopped maintaining her and has exposed her to mental anguish as a result.
8. The matter was cleared by the Deputy Registrar on 7th February 2014 to proceed as a defended cause.

9. The petitioner testified on 9th July 2015 and gave vent to the allegations made in his petition. He confined his testimony to the ground of desertion. He stated that he and the respondent stopped living together in August 2005, and since then cohabitation has not resumed. No counter evidence was given by the respondent, and therefore the petitioner's oral story was not controverted.
10. I am satisfied from the recorded evidence that the respondent deserted the petitioner. She has consistently stayed away from the petitioner since 2005.
11. It would appear to me that the marriage between the parties herein has irretrievably broken down. It would also appear to me that there has been no collusion between the petitioner and the respondent in the bringing of these proceedings. There is also no evidence that the petitioner has condoned the desertion proved in the matter.
12. Based on the above, I do hereby dissolve the marriage celebrated between the petitioner and respondent on 19th February 2003. Decree *nisi* shall issue forthwith and shall be made absolute after thirty (30) days. There will be no orders as to costs.

DATED, SIGNED and DELIVERED at NAIROBI this 6TH DAY OF NOVEMBER, 2015.

W. MUSYOKA

JUDGE