

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

FAMILY DIVISION

DIVORCE CAUSE NO. 150 OF 2010

M.K.....PETITIONER

VERSUS

J.K.....RESPONDENT

JUDGMENT

1. On 31st May 1996, the petitioner and the respondent got married under the now repealed **Marriage Act (Cap 150)** at a ceremony conducted at the Registrar of Marriages Office at Nairobi. The couple subsequently co-habited as husband and wife in several places within Nairobi with their last residence being at [particulars withheld] in Kileleshwa. The union was blessed with two issues: A.K.L born in 1996 and S.C.L born in 2006.
2. In the petition dated 18th November 2010, the petitioner sought the dissolution of the marriage on the grounds of cruelty and adultery and listed the particulars. The respondent on his part filed his answer to the petition and cross-petition. He denied the particulars of cruelty and adultery, and in his cross-petition sought the dissolution of the marriage on the grounds of constructive desertion and cruelty on the part of the petitioner He listed the particulars.
3. During the hearing, counsel for petitioner made an application to amend the petition by adding paragraph 14 stating that “The marriage between the petitioner and the respondent has irretrievably broken down” and paragraph 15 stating that “The petitioner and the respondent have not been living together in the same house since 2009 and have not cohabited together since.” He also sought amendment of the prayers so that paragraph (e) reads “Each party to bear own costs.” The court allowed the above amendments. Counsel for respondent also sought amendment of the answer to petition and cross-petition to withdraw the cross-petition with no order as to costs.
4. The petitioner testified that they stopped staying together and cohabiting in October 2009 following differences. Before then several meetings had been held to try and reconcile them. The meetings were held at their house at Kileleshwa, and in Kericho and Nandi. They were attended by their parents, uncles, aunties and pastor. The couple was not able to reconcile. In the evidence of the petitioner, the marriage has broken down irretrievably.
5. I accept that evidence. It was not challenged. On the basis that the parties have been separated since October 2009, have not cohabited since, and the marriage has broken down beyond repair, I order its dissolution. *Decree Nisi* shall issue and shall become absolute after 30 days.
6. The parties have agreed that they will have joint legal custody of S.C.L., with the petitioner having the care and control of the minor. The respondent shall have full access to the said minor. Lastly, the respondent shall from today henceforth cater for the fees of S.C.L. until she attains 18 years.
7. Each party shall bear own costs on the petition, and the cross- petition shall be deemed to be withdrawn with no orders as to costs.

DATED and DELIVERED at NAIROBI this 4TH DECEMBER 2015

A.O. MUCHELULE

JUDGE