

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

DIVORCE CAUSE NO. 147 OF 2010

A.G.M.....PETITIONER

VERSUS

B.J.M.....1ST RESPONDENT

I.S.....2ND RESPONDENT

J U D G M E N T

The Petitioner and the 1st Respondent were on 9th June 2001 married in Las Vegas, Nevada, United States of America. After the celebration of the marriage, the Petitioner and the Respondent cohabited together as husband and wife in Dallas, United States of America and Ottawa in Canada. They later settled in Nairobi, Kenya. This court therefore assumes jurisdiction on the basis of the domicile of the parties to this petition for divorce. The marriage has been blessed with three (3) children born between 2001 and 2008. The Petitioner avers that since the celebration of the said marriage, the 1st Respondent has committed adultery with one I.S the 2nd Respondent herein. He further accused the 1st Respondent of treating him with cruelty. In particular, he deponed that the 1st Respondent had been physically and verbally abusive towards him thus causing him to suffer mental anguish. He accused the 1st Respondent of constantly disappearing from the matrimonial home and failing to undertake her wifely duties. He also accused the 1st Respondent of being disrespectful, a drunkard, morally reckless and an irresponsible mother to the children of the marriage. In the premises therefore, the Petitioner pleaded with the court to grant his petition for divorce and also grant him custody of the children of the marriage.

The 1st Respondent was served with the petition for divorce. She duly entered appearance. The Deputy Registrar of this court issued a certificate certifying this cause as suitable to be heard as an undefended divorce cause. However, following an application by the 1st Respondent, leave was granted to the 1st Respondent to file the answer to the petition out of time. Although a draft answer to the petition and cross petition is on record, the same was not filed in court. During the hearing, this court heard oral evidence adduced by the Petitioner. He essentially reiterated the contents of his petition for divorce. He produced copies of email conversations confirming the 1st and 2nd Respondents' adulterous liaisons. He stated that the 1st Respondent had abdicated her parental responsibilities towards the children of the marriage. He told the court that he has been separated from the 1st Respondent since February 2012. He stated that since then, he has had custody of the children of the marriage and has been singlehandedly caring for them. The Petitioner stated that he was willing to continue paying maintenance of Kshs. 75,000 to the 1st Respondent as earlier agreed.

This court has carefully considered the said evidence. It was clear to this court that indeed the Petitioner established the matrimonial offences of adultery and cruelty to the required standard of proof on a balance of probabilities. The evidence adduced by the Petitioner in that regard was unconverted. This court formed the opinion that indeed the marriage between the Petitioner and the Respondent had irretrievably broken down with no possibility of salvage. The Petitioner and the Respondent have been separated since February 2012. If there was any chance of reconciliation, the same would have been attempted in the intervening period. For the above reasons, this court has no option but to grant the petition for divorce.

In the premises therefore, the marriage between the Petitioner and the Respondent which was celebrated on 9th June 2001 at Las Vegas, Nevada, United States of America is hereby dissolved. Decree nisi dissolving the said marriage is hereby issued. The decree nisi shall be made absolute thirty (30) days from the date of this judgment. The issue of the custody of the children of the marriage shall be determined by the children's court. There shall be no orders as to costs. It is so ordered.

DATED AT NAIROBI THIS 7TH DAY OF FEBRUARY, 2014.

L. KIMARU

JUDGE