

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

DIVORCE CAUSE NO. 40 OF 2012

A.KPETITIONER

VERSUS

D.M.M.....RESPONDENT

JUDGEMENT

The Petitioner and the Respondent started cohabiting together as husband and wife in February 2002. They formalized their marriage on 6th August 2004 when they were married at the Registrar’s office in Nairobi. According to the Petitioner, the couple cohabited together as husband and wife at Kawangware, Satellite and Hurlingham DOD Estates, Nairobi. The marriage was blessed with two (2) issues born in 2003 and 2007. In her petition, the Petitioner complained that since the celebration of the said marriage the Respondent had committed adulterous affairs with various women that she particularized in her petition for divorce. The Petitioner further accused the Respondent of treating her with cruelty. In the particulars of cruelty, the Petitioner inter alia, avers that the Respondent neglected his duty as a father and a husband. She states that the Respondent had on several occasions been violent towards her. She further complains that the Respondent physically assaulted her during the subsistence of the marriage. He had also humiliated and embarrassed her in the presence of their children and neighbours. The Petitioner accused the Respondent of neglecting his parental and familial duties by failing to provide her basic needs and that of the children of the marriage. She accused the Respondent of desertion. She stated that she had been separated from the Respondent since May 2010. According to the Petitioner, her marriage to the Respondent had irretrievably broken down with no possibility of salvage.

The Respondent was served with the notice of appearance together with a copy of the petition for divorce. He did not enter appearance. Neither did he file any papers in answer to the petition for divorce. The Deputy Registrar of this court issued a certificate certifying this cause as a suitable one to be disposed of by this court as an undefended divorce cause. At the hearing of the petition, this court heard oral evidence adduced by the Petitioner. She reiterated the contents of the petition. She accused the Respondent of harassing her. She complained that the Respondent had made her life intolerable that she had to relocate to Kisii. For these reasons, the Petitioner was of the view that her marriage to the Respondent had irretrievably broken down. The Petitioner told the court that she was currently taking care of the children of the marriage.

From the evidence adduced, it was clear that the marriage between the Petitioner and the Respondent has indeed irretrievably broken down with no possibility of salvage. Her testimony was uncontroverted. The Petitioner and the Respondent are no longer living together. They have been separated for nearly three years. This court holds that the Petitioner established the grounds of cruelty and adultery in her petition for divorce to the required standard of proof on a balance of probabilities. This court will grant the petition for divorce.

In the premises therefore, the marriage solemnized on 6th August 2004 at the Registrar’s Office, Nairobi between the Petitioner and the Respondent 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. There shall be no orders as to costs.

DATED AT NAIROBI THIS 7TH DAY OF FEBRUARY, 2014

L. KIMARU

JUDGE