

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

DIVORCE CAUSE NO. 185 OF 2012

R T M.....PETITIONER

VERSUS

D M M.....RESPONDENT

J U D G M E N T

The Petitioner and the Respondent were married under customary law in 1989. They formalized their marriage on 20th September 1996 when they were married at the Registrar's office in Nairobi. After the celebration of the marriage, the Petitioner and the Respondent cohabited together as husband and wife in Umoja and Riruta Satelite Estates in Nairobi. The marriage was blessed with two (2) issues both of who are now adults. According to the Petitioner, the Respondent deserted the matrimonial home sometime in May, 2000. Since their separation, the Petitioner and the Respondent have lived separate lives. The Petitioner further accuses the Respondent of committing the matrimonial offence of adultery. She averred that the Respondent had engaged in an extra marital affair with one R N M during the period of their marriage. In the premises therefore, she asks the court to grant her petition for divorce also order the Respondent to pay maintenance for the issues of the marriage.

Upon being served with the petition, the Respondent filed an answer to the petition and cross petitioned to be divorced from the Petitioner. In the answer to the petition, the Respondent denied the allegations made in the petition by the Petitioner which was to the effect that he had been guilty of the matrimonial offences of desertion and adultery. In regard to all those allegations, the Respondent put the Petitioner to strict proof thereof. The Respondent stated that he has been contributing towards the financial needs of the family.

In his cross petition for divorce, the Respondent averred that since the celebration of the said marriage the Petitioner had treated him with cruelty causing him to suffer mental distress and anguish. He sets out the particulars of cruelty in his cross petition for divorce. In particular, he alleges that the Petitioner had denied him his conjugal rights, was verbally abusive and exhibited violent tendencies towards him. He further stated that the Petitioner had humiliated and embarrassed him in the presence of their children and neighbours. He averred that the Petitioner had been guilty of willful neglect of his welfare. The Respondent averred that the Petitioner had shown him utter cruelty and that for that reason he had to leave the matrimonial home. He stated that the Petitioner was therefore guilty of constructive desertion. For these reasons, the Respondent was of the view that his marriage to the Petitioner had broken down. In the premises, he urged the court to dismiss the Petition and to dissolve the marriage. He also prayed to be granted costs of the petition.

In response to the Respondent's reply to the petition and cross petition the Petitioner reiterated the contents of the petition and denied all allegations made by the Respondent in his cross petition and put the Respondent to strict proof thereof. During the hearing of the petition, it was only the Petitioner who was present in court. She reiterated the contents of her petition for divorce. This court read the pleadings filed by the parties to this petition for divorce. The court has also considered the evidence that was adduced by the Petitioner in support of her petition for divorce. 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. The accusations and counter accusations of desertion, cruelty and infidelity are sufficient proof that the marital relationship between the Petitioner and the Respondent has deteriorated to

such extent that it cannot be salvaged. This court holds that the Petitioner established the ground of desertion in her petition for divorce to the required standard of proof on a balance of probabilities. She has been separated from the Respondent for more than thirteen (13) years. If reconciliation was attempted, then, the same should have succeeded during this period. It is apparent to the court that the Petitioner and the Respondent have each gone their separate ways. This court will therefore grant the petition for divorce.

In the premises therefore, the marriage solemnized on 20th September 1996 between the Petitioner and the Respondent at the Registrar's Office in Nairobi 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