

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

DIVORCE CAUSE NO. 152 OF 2013

D W.....
.....PETITIONER

VERSUS

K W.....RESPONDENT

J U D G M E N T

The Petitioner and the Respondent were on 30th March 1996 married under the **Marriage Act**. The marriage was celebrated at St. Paul's church, Kiambu. After the celebration of the said marriage, the Petitioner and the Respondent cohabited together as husband and wife in Naivasha. The marriage has been blessed with one (1) child. According to the Petitioner, the Respondent has since the celebration of the marriage deserted the matrimonial home. He stated that the Respondent had moved to Nairobi with the child of the marriage. They are now living separately. He accused the Respondent of blocking all channels of communication in the marriage. The Petitioner further accused the Respondent of denying him conjugal rights. He averred that the Respondent was abusive, quarrelsome and had denied him access to the child of the marriage. It is for the above reasons that the Petitioner was of the view that his marriage to the Respondent had irretrievably broken down with no possibility of salvage. He therefore urges the court to dissolve the marriage.

When the Respondent was served with the petition for divorce, She duly entered appearance and filed an answer to the petition. She also and cross petitioned to be divorced from the Petitioner. The answer to the petition and cross petition was however withdrawn through a Notice of withdrawal of the Answer to the Petition and Cross Petition filed in court on 4th December 2013. The Deputy Registrar of this court therefore issued a certificate certifying this cause as suitable to be heard as an undefended divorce cause. During the hearing of the divorce cause, it was only the Petitioner who testified. He basically reiterated the contents of the petition for divorce. He stated that his marital differences with the Respondent were irreconcilable. He further stated that they had been separated since April, 2008. This court was satisfied from the evidence adduced by the Petitioner that indeed his marriage to the Respondent had irretrievably broken down with no possibility of salvage. They have been separated for more than five (5) years. If there was any chance that the Petitioner and the Respondent would be reconciled then reconciliation would have been attempted in the intervening period. This court formed the opinion that the Petitioner established the matrimonial offences of desertion 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 celebrated between the Petitioner on 30th March 1996 at St. Paul's Church in Kiambu 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 10TH DAY OF MARCH , 2014

L. KIMARU

JUDGE