

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

DIVORCE CAUSE NO. 153 OF 2011

D G.....PETITIONER

VERSUS

A W N.....RESPONDENT

J U D G M E N T

The Petitioner and the Respondent were married on 2nd February 2005 at the Registrar's Office in Nairobi. The marriage was celebrated under the **Marriage Act**. After the celebration of the marriage the Petitioner and the Respondent cohabited together as husband and wife in Nairobi. The marriage has not been blessed with any issue. According to the Petitioner, the Respondent has since the celebration of the said marriage deserted the matrimonial home. The Respondent left the matrimonial home for the United States of America in February 2008 and has since then not returned to the matrimonial home. Despite request by the Petitioner for the Respondent to return to their matrimonial home, the Petitioner avers that the Respondent has failed to pay heed to the request. The Petitioner further accuses the Respondent of treating him with cruelty. He sets out the particulars of cruelty in his petition for divorce. In summary, he states that the Respondent had shown him utter contempt and lack of commitment towards their marriage. He averred that the Respondent had been guilty of willful neglect of his welfare. For these reasons, the Petitioner was of the view that the Petitioner's behaviour had caused him to suffer mental stress and anguish which could only be remedied by this court granting his petition for divorce. He therefore urged the court to dissolve his marriage to the Respondent and also award him costs of the petition.

Upon being served with the petition, the Respondent filed a reply to the petition. She denied the allegations made in the petition for divorce by the Petitioner. In particular, she denied that she had deserted the matrimonial home. She averred that, with the consent of the Petitioner, she had travelled to the United States of America. It was her case that they had agreed that the Petitioner would join her later. According to the Respondent, the Petitioner has since changed his mind and refused to relocate to the United States. In the premises, the Respondent urged the court to dissolve the marriage. During the hearing of the petition, it was only the Petitioner who was present in court. He reiterated the contents of his petition for divorce. He testified that he has lost touch with the Respondent since she left the matrimonial home. He told the court that he had been separated from the Respondent for a period of more than three (3) years. The Petitioner was of the opinion that his marriage to the Respondent had irretrievably broken down with no possibility of salvage. He urged the court to grant his petition for divorce. The Respondent opted to give no evidence on the issue of divorce. This court has carefully considered the facts of this divorce cause. It was clear from the pleadings filed by both parties and also by the evidence adduced by the Petitioner that the marriage between the Petitioner and the Respondent had indeed irretrievably broken down. The Petitioner and the Respondent are no longer living together. They have been separated for nearly six (6) years. This court holds that indeed the matrimonial offences of desertion in his petition for divorce has been proved to the required standard of proof on a balance of probabilities. Neither the Petitioner nor the Respondent seems to have any wish or desire to sustain the marriage. This court therefore has no option but to grant the petition for divorce.

In the premises therefore, the marriage celebrated between the Petitioner and the Respondent on 2nd February 2005 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) from the date of this judgment. There shall be no orders as to costs. It is so ordered.

DATED AT NAIROBI THIS 4TH DAY OF MARCH, 2014

L. KIMARU

JUDGE