



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**DIVORCE CAUSE NO. 170'B' OF 2011**

**U S I.....PETITIONER**

**VERSUS**

**R M K.....RESPONDENT**

**J U D G M E N T**

The Petitioner and the Respondent were on 1<sup>st</sup> August 2008 married under Islamic Law. They solemnized their marriage on 9<sup>th</sup> August 2008 at the Registrar's Office in South C Nairobi. The marriage has not been blessed with any children. According to the Petitioner, during the subsistence of the said marriage, the Respondent treated her with cruelty. She sets out the particulars of cruelty in her petition for divorce. In summary, she alleged that the Respondent was a drug addict. She stated that as a result, the Respondent had deserted the matrimonial home on several occasions. He was also abusive. She averred that the Respondent neglected his familial responsibilities. The Petitioner complained that as a result of his drug addiction, the Respondent had become delusional. She further complained that the Respondent sold off their household goods to sustain his addiction. The Petitioner accused the Respondent of deserting the matrimonial home sometime in April 2010. It was on these grounds that the Petitioner was of the view that the marriage had irretrievably broken down with no possibility of salvage. She urged the court to grant her petition for divorce and also award her costs of the petition.

When the Respondent was served, he duly entered appearance and filed an answer to the petition. He also cross-petitioned to be divorced from the Petitioner. In answer to the petition, the Respondent denied the allegations made in the petition for divorce by the Petitioner. In particular, he denied deserting the matrimonial home. He averred that it was the Petitioner and her uncle who kicked him out of the matrimonial home. The Respondent denied that being a drug addict. However, he admitted to have experimented with drugs. He stated that he underwent treatment and has been clean for the past sixteen (16) years. He denied the allegation that he had neglected his familial responsibilities to the Petitioner.

In his cross-petition for divorce, the Respondent averred that since the celebration of the said marriage, the Petitioner had treated him with cruelty. He averred that the Petitioner had denied him conjugal rights. He accused the Respondent of being demanding. He averred that the Petitioner and her relatives kicked him out of the matrimonial home. He further averred that the Petitioner had cut off communication with him. For these reasons, the Respondent was of the view that his marriage to the Petitioner had caused him to suffer mental anguish which could only be remedied by this court granting his cross-petition for divorce. He therefore urged the court to declare his marriage to the Petitioner duly dissolved.

During the hearing of the petition for divorce, this court heard evidence adduced by the Petitioner. The evidence was adduced in the presence of counsel for the Respondent. She basically reiterated the contents of her petition for divorce. She told the court that the Respondent has been treated for drug addiction and produced medical report to confirm the same. She stated that the Respondent became mentally unstable and could not perform his responsibilities as a husband. She testified that the Respondent had previously deserted the matrimonial home only to come back and steal their household goods. She told the court that the Respondent has been threatening her. The matter had been reported to the police. This court has carefully considered the facts of this case. It was clear from the pleadings filed by both parties and also by the evidence adduced by the Petitioner in court that indeed the marriage between the Petitioner and the Respondent had irretrievably broken down. The accusations and counter

accusations of cruelty should thus be seen in this context. The Petitioner and the Respondent are no longer living together. They have been separated for nearly three (3) years. For the above reasons, I grant the petition for divorce.

In the premises therefore, the marriage solemnized on 9<sup>th</sup> August 2008 between the Petitioner and the Respondent at South C, 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 17<sup>TH</sup> DAY OF MARCH 2014.**

**L. KIMARU**

**JUDGE**