

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

DIVORCE CAUSE NO. 135 OF 2012

W.W.K.....PETITIONER

VERSUS

J.K.G..... 1ST RESPONDENT

R.C.....2ND RESPONDENT

J U D G M E N T

W.W.K, the Petitioner herein, was married to J.K.G, the 1st Respondent on 7th July 2007. The marriage was celebrated at St. Austin Catholic Church, Nairobi under the **African Christian Marriage and Divorce Act**. The marriage was blessed with two issues, twins, born on 8^h February 2010. After the celebration of the marriage, the Petitioner and the 1st Respondent cohabited together as husband and wife in various estates within the City of Nairobi. The Petitioner avers that since the celebration of the said marriage, the 1st Respondent has treated her with cruelty. She sets out the particulars of cruelty in her petition for divorce. The said instances of cruelty include treating the Petitioner with utter contempt and disrespect; causing the Petitioner to suffer mental anguish; failing to provide for the Petitioner; neglecting his responsibilities as a husband and denial of conjugal rights to the Petitioner thereby causing her to suffer loneliness. Because of the 1st Respondent's acts of cruelty, the Petitioner and the 1st Respondent were separated on 24th April 2012. Since then, the Petitioner and the 1st Respondent have been living separately. She therefore urged the court to grant her petition for divorce because, in her view, her marriage to the Respondent had irretrievably broken down with no possibility of salvage. She prayed that the court grants her petition for divorce and also grant her custody of the children of the marriage. She also prayed to be granted costs of the petition.

Upon being served with the petition, the 1st Respondent filed an answer to the petition and cross petitioned to be divorced from the Petitioner. In the answer to the petition, the 1st Respondent denied the allegations made in the petition by the Petitioner which was to the effect that he had been guilty of the matrimonial offence of cruelty. In regard to all those allegations, the 1st Respondent put the Petitioner to strict proof thereof. The 1st Respondent stated that it is the Petitioner who had subjected him to acts of cruelty causing him to suffer mental anguish.

In his cross petition for divorce, the 1st Respondent averred that since the celebration of the said marriage, the Petitioner has committed adultery with one R.C the 2nd Respondent herein. He further accused the Petitioner of treating him with cruelty. In particular, he accused the Petitioner of desertion. He stated that on or about 24th April 2012, the Petitioner deserted the matrimonial home with the children of the marriage and had since then not returned to the said matrimonial home. According to the 1st Respondent, the Petitioner's desertion of the matrimonial home has subjected the issues of the marriage to psychological instability and uncertainty. He accused the Petitioner of exhibiting uncaring and complete disregard of his feelings that of the children of the marriage by subjecting them to her adulterous relationship with the 2nd Respondent. In the premises, the 1st Respondent urged the court to grant his cross petition for divorce and to dissolve the marriage.

In response to the 1st Respondent's reply to the petition and cross petition, the Petitioner reiterated the contents of the petition and denied all allegations made by the 1st Respondent in his cross petition and put the 1st Respondent to strict proof thereof. During the hearing of the petition, it was only the Petitioner who testified in court. She reiterated the contents of her petition for divorce. The court read the pleadings

filed by the parties to this petition for divorce. The court has also considered the evidence 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 1st Respondent has indeed irretrievably broken down with no possibility of salvage. The accusations and counter accusations of cruelty, desertion and adultery are sufficient proof that the marital relationship between the Petitioner and the 1st Respondent has deteriorated to such extent that it cannot be salvaged. The Petitioner and the 1st Respondent have been separated since 24th April 2012. They are no longer interested in the marriage. It is apparent to the court that the Petitioner and the 1st Respondent have each gone their separate ways. This court is of the view that the 1st Respondent established the matrimonial offence of desertion. In the premises therefore, this court will therefore grant the petition for divorce.

In the premises therefore, the marriage celebrated between the Petitioner and the 1st Respondent on 7th July 2007 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