

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

DIVORCE CAUSE NO. 89 OF 2010

B M NPETITIONER

VERSUS

A M K1STRESPONDENT

A H B2NDRESPONDENT

J U D G M E N T

The Petitioner and the 1st Respondent filed two separate petitions for divorce. They were consolidated and heard together as one. The Petitioner's petition for divorce was deemed as the running file whereas the 1st Respondent's petition for divorce was deemed as an undefended cross-petition for divorce. The Petitioner and the 1st Respondent were on 28th August 2001 married 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 1st Respondent cohabited together as husband and wife in Nairobi and Kitale. The marriage has not been blessed with any issues. The Petitioner has two children from a previous relationship. According to the Petitioner, since the celebration of the said marriage, the 1st Respondent has committed the matrimonial offences of desertion, cruelty and adultery, particulars thereof he has listed in the petition for divorce. In particular, he pleaded that the 1st Respondent had, during the subsistence of the marriage, deserted from the matrimonial for extended periods of time. The Petitioner averred that the 1st Respondent deserted from the matrimonial home on 20th March 2009 and had since then not returned to the said matrimonial home. In the particulars of cruelty, the Petitioner *inter alia* accused the 1st Respondent of being cruel to his children from a previous relationship, treated his relatives with disrespect, being verbally abusive, denying him his conjugal rights and consortium and being an irresponsible mother. The Petitioner further averred that the 1st Respondent had on several occasions gone home while drunk. The Petitioner accused the 1st Respondent of committing adultery with various men. In particular, he accuses the 1st Respondent of committing adultery with one A H B, the 2nd Respondent herein.

In her cross-petition for divorce, the 1st Respondent accused the Petitioner of treating her with cruelty. In particular, she deponed that the Petitioner had been verbally abusive towards her. She further accused the Petitioner of physically abusing her, frustrating her and invading on her privacy by employing people to monitor her. She also accused the Petitioner of drunkenness and being a person of ungovernable temper. The 1st Respondent further accused the Petitioner of committing adultery with various women and in particular with one M W. For these reasons, the 1st Respondent and the Petitioner separated on 27th March 2009. Since then, they have been living separately. At the hearing of the Petition, this court heard oral evidence adduced by both the Petitioner and the 1st Respondent. According to both the Petitioner and the 1st Respondent, the marriage had irretrievably broken down with no possibility of salvage. All attempts to salvage the marriage have not borne any fruit and therefore the only remedy is for the marriage to be dissolved.

This court has carefully considered the pleadings filed by the parties to these divorce proceedings. From the facts of this case, 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 desertion, cruelty 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 March 2009. 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. In the premises therefore, this court will therefore grant the petition for divorce.

The marriage celebrated on 28th August 2001 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 14TH DAY OF JULY, 2014

L. KIMARU

JUDGE