



REPUBLIC OF KENYA.

IN THE HIGH COURT OF KENYA AT KITALE.

DIVORCE CAUSE NO. 6 OF 2012.

D W M.....PETITIONER.

VERSUS

D L W.....RESPONDENT.

J U D G M E N T.

This is a petition by **D W M**, in which he seeks an order for the dissolution of the marriage between him and the respondent, **D L W**. He also seeks custody of the three issues of the marriage which was contracted on the 24th June, 2000 at Salvation Army Church under the Marriage Act (Cap 150 LOK) and for which a certified copy of an entry of marriage was issued on the 14th October, 2011 (P. Ex.1)

After the marriage, the couple established a matrimonial home at Trans Nzoia County and have since been blessed with three issues namely; S S] born in 1998, V N born in 2000 and M N born 2007. The petitioner however, avers that the marriage has been less than happy due to the alleged acts of cruelty by the respondent against himself. He also avers that the respondent deserted the matrimonial home and went to live with her parents. He further, avers that the respondent engaged in adultery during the subsistence of the marriage.

It is for those reasons that the petitioner now seeks orders for the dissolution of the marriage and custody of the three issues.

The respondent entered appearance on the 30th November, 2012 but did not file an answer to the petition and on the 20th February, 2013, the Deputy Registrar issued a certificate of compliance and ordered that the matter be listed for hearing. The hearing notice was served upon the respondent but she failed to appear in court on the 11th March, 2014, when the matter was stated for hearing.

In his testimony, the petitioner (PW1) stated that the marriage was peaceful for a period of about three (3) years but after the birth of their second child in the year 2000, the respondent's mother developed a dislike towards him for being less educated than the respondent. This caused the respondent to develop a different behaviour as she seemed to agree with her mother. She was mostly found at her parent's home and when he (petitioner) joined the Salvation Army she also became a member but involuntary. The two attended various church functions during which she became adulterous and rebellious. She also declined to fulfill her obligation as a pastor's wife and denied the petitioner conjugal rights apart from assaulting and abusing him. This led to them being expelled from their church. They re-located to their home village but the respondent did not relent in her adulterous ways. She finally deserted the matrimonial

home and returned to her parent's home where she lives to date with their children.

The petitioner contended that their marriage has irretrievably broken down and that there is no possibility that it can be salvaged. He said that the first and second issue of the marriage are in his custody while the last issue is in the custody of the respondent.

It is evident from the foregoing facts that the petitioner has made serious allegations of cruelty and adultery against the respondent but was unable to establish the same by way of cogent and credible evidence.

However, the allegation of desertion is established by the fact that the respondent left the matrimonial home without the consent of the petitioner and has been away for a period of about three and a half (3 ½) years. This alone, is sufficient reason for the marriage to be dissolved.

However, it is quite evident that the marriage is beyond salvage and has indeed irretrievably broken down. Each party should be set at liberty to move on with their own lives.

In the upshot, it is hereby ordered that the marriage between the petitioner and the respondent be and is hereby dissolved. They shall each have custody of the children already living with them respectively.

Each of them shall bear own costs of the petition. A decree-nisi shall forthwith issue and be made absolute within three (3) months from this date hereof.

Ordered accordingly.

[Delivered and signed this 3rd day of July, 2014.]

J.R. KARANJA.

JUDGE.