

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

DIVORCE CAUSE NO. 77 OF 2012

L N N.....PETITIONER

VERSUS

M O.....RESPONDENT

J U D G M E N T

The Petitioner and the Respondent were married under customary law. They converted their marriage into a statutory one on 17th April 2007 when they were married at the Registrar’s Office in Nairobi. The marriage was celebrated under the **Marriage Act**. After the celebration of the said marriage, the Petitioner and the Respondent cohabited together as husband and wife in Nairobi. The marriage has been blessed with one (1) child born on 30th June 2007. The Petitioner avers that since the celebration of the said marriage, the Respondent has treated her with cruelty. In particular, she deponed that the Respondent has denied her access to the matrimonial home since December 2011 when she returned from the United Kingdom. She accused the Respondent of exhibiting uncaring and complete disregard of her feelings. She complained that the Respondent neglected his responsibility as a husband by failing emotionally and financially supports her. The Petitioner also accused the Respondent of committing adultery with another woman thus causing her to suffer mental, emotional and psychological anguish. For the above reasons, the Petitioner is of the view that her marriage to the Respondent had irretrievably broken down with no possibility of salvage. In the premises therefore, the Petitioner pleaded with the court to grant her petition for divorce, grant her custody of the child of the marriage and also order the Respondent to provide maintenance for her upkeep and that of the child. The Petitioner further urged the court to award her costs of the petition.

In response to the petition for divorce, the Respondent filed an answer to the petition and 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 that he had treated the Petitioner with cruelty or that he had engaged in an extra marital affair. The Respondent averred that the Petitioner had over extended her stay in the United Kingdom in total disregard of the Respondent's feelings and welfare.

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 been guilty of willful neglect of his welfare and that of the child of the marriage by deserting the matrimonial home. He stated that the Petitioner deserted the matrimonial home from mid 2009 for extended periods of time thereby denying him his conjugal rights. The Respondent stated that the Petitioner made false allegations against him to the police. He also complained that the Petitioner had taken away household items from the matrimonial home. The Petitioner therefore urged the court to dissolve the marriage. He further prayed to be granted custody of the child of the marriage.

During the hearing of the petition for divorce, this court heard oral evidence adduced by the Petitioner. Counsel for the parties agreed that the trial proceeds as such. She basically reiterated the contents of her petition for 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 indeed the marriage of the Petitioner and the Respondent had irretrievably broken down. The accusations and counter accusations of cruelty and adultery are sufficient proof that the marital relationship between the Petitioner and the Respondent has deteriorated to such an extent that it cannot be salvaged. The Petitioner and the Respondent are no longer living together. They have been separated for nearly five (5) years. This court formed the view that the matrimonial offence of desertion had been proved to the required standard

of proof on a balance of probabilities. This court will grant the petition for divorce.

In the premises therefore, the marriage celebrated on 17th April 2007 at the Registrar's Office, Nairobi, between the Petitioner and the Respondent 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. The issue of custody and maintenance of the child of the marriage shall be determined by the Children's Court. There shall be no orders as to costs.

DATED AT NAIROBI THIS 14TH DAY OF JULY, 2014

L. KIMARU

JUDGE