

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

DIVORCE CAUSE NO. 145 OF 2012

M K NPETITIONER

VERSUS

T F RRESPONDENT

J U D G M E N T

The Petitioner and the Respondent were on 14th July 1983 married in the City of Ithaca, New York, United States of America. After the celebration of the said marriage, the Petitioner and the Respondent cohabited together as husband and wife in New York, United states of America; St. Louis, Senegal and Bouake, Cote D'ivoire. They later settled in Nairobi, Kenya. This court therefore assumed jurisdiction on the basis of domicile of the parties to this petition for divorce. The marriage has been blessed with two (2) children, both are now adults. The Petitioner has two (2) children, adults, from a previous relationship. The Respondent adopted them in 1987. According to the Petitioner, the Respondent deserted the matrimonial home in April 2007. Since their separation, the Petitioner and the Respondent have lived separate lives. It was for this reason that the Petitioner asked the court to dissolve the marriage. She also asked the court to grant her the costs of the petition for divorce.

When the Respondent was served, he duly entered appearance and filed an answer to the petition for divorce. He further cross-petitioned to be divorced from the Petitioner. He denied the allegation made in the petition for divorce which was to the effect that he had been guilty of the matrimonial offence of desertion. In regard to this allegation, the Respondent put the Petitioner to strict proof thereof.

In his cross-petition for divorce, the Respondent averred that the Petitioner was guilty of constructive desertion. He sets out the particulars of constructive desertion in his cross-petition for divorce. In particular, he alleges that the Petitioner's conduct made it impossible to continue cohabitation. He averred that no conjugal relations have taken place since their separation. For this reason, the Respondent was of the view that his marriage to the Petitioner had broken down. In the premises, he urged the court to dismiss the petition and dissolve the marriage as prayed in the cross-petition for divorce. He also prayed to be granted costs of the petition.

In response to the Respondent's answer to the petition and cross-petition, the Petitioner reiterated the contents of the Petition and denied all the allegations made by the Respondent in his cross-petition. The Petitioner put the Respondent to strict proof thereof. During the hearing of the petition, it was only the Petitioner who testified in court in the presence of counsel for the Respondent. She reiterated the contents of her petition for divorce. This court read the pleadings filed by the parties to this petition for divorce. The court has also considered the evidence that was adduced by the Petitioner in support of her petition for divorce. From the evidence adduced, it was clear to the court that the marriage between the Petitioner and the Respondent has indeed irretrievably broken down with no possibility of salvage. The accusation and counter accusation of desertion is sufficient proof that the marital relationship between the Petitioner and the Respondent has deteriorated to such extent that it cannot be salvaged. This court holds that the Petitioner established the ground of desertion in her petition for divorce to the required standard of proof on a balance of probabilities. She has been separated from the Respondent for a period of more than seven (7) years. If reconciliation were to be successful, then, the same should have attempted in the intervening period. It is apparent to the court that the Petitioner and the Respondent have each gone their separate ways. This court will grant the petition for divorce.

In the premises therefore, the marriage celebrated on 14th July 1983 between the Petitioner and the Respondent in the City of Ithaca, New York, United States of America 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