

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

DIVORCE CAUSE NO. 58 OF 2011

T W N.....PETITIONER

VERSUS

I K M.....RESPONDENT

J U D G M E N T

The Petitioner and the Respondent were married on 3rd September 2005 at Karen Blixen Museum, 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 issue. The Petitioner avers that since the celebration of the said marriage, the Respondent had treated him with cruelty. He sets out the particulars of cruelty in his petition for divorce. In particular, he alleged that the Respondent had threatened to shoot him with a gun. The Petitioner accused the Respondent of chasing him out of their matrimonial bed thereby denying him his conjugal rights. He complained that the Respondent had failed to take proper care of the child of the marriage. He further accused her of committing adultery with various men as particularized in his petition for divorce. For these reasons, the Petitioner was of the view that his marriage to the Respondent had irretrievably broken down. In the premises therefore, he urged the court to dissolve the marriage and divide the matrimonial property equally between himself and the Respondent. He also asked to be awarded the costs of the petition.

Upon being served with the petition, the Respondent filed an answer to the petition. She also cross petitioned to be divorced from the Petitioner. In the answer to the petition, the Respondent denied the allegations made in the petition which was to the effect that she had been guilty of the matrimonial offences of cruelty and adultery. In regard to all these allegations, the Respondent put the Petitioner to strict proof thereof. The Respondent averred that it is the Petitioner who failed to provide a conducive environment for the enjoyment of conjugal rights. She further stated that it was the Petitioner who deserted from the matrimonial home on his own volition.

In her cross petition for divorce, the Respondent averred that since the celebration of the said marriage the Petitioner had treated her with cruelty. She sets out the particulars of cruelty in her cross petition for divorce. In particular, she alleges *inter alia* that the Petitioner had been guilty of willful neglect of her welfare and that of the child of the marriage. She accused the Petitioner of failing to provide for the basic needs of the family, including paying for household expenses, medical expenses and providing for the education of the issue of the marriage. She stated that the Petitioner had shown utter contempt and lack of commitment to their marriage. The Respondent also accused the Petitioner of withholding from her love and affection. She further accused the Petitioner of committing adultery with various women as particularized in her cross petition for divorce. She finally stated that the Petitioner was guilty of desertion. The Respondent averred that the Petitioner deserted the matrimonial home on 18th January 2007 and has since abandoned the Respondent and the child of the marriage. She therefore urged the court to grant her cross petition for divorce and also order the Respondent to provide maintenance for her upkeep. She also prayed to be granted costs of the petition.

During the hearing of the petition, it was only the Petitioner who testified in court. This was after counsel for the parties agreed for the hearing to proceed as such. He reiterated the contents of his petition for divorce. He told the court that he had been separated from the Respondent for seven (7) years. He averred that there was no chance that there would be reconciliation. The Petitioner was of the opinion that his marriage to the Respondent had irretrievably broken down with no possibility of salvage. He urged the

court to grant his petition for divorce. The Respondent opted not to give evidence on the issue of 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 the marriage between the Petitioner and the Respondent had indeed irretrievably broken down. The Petitioner and the Respondent accused each other of committing acts of cruelty. In the detailed particulars, it was apparent that the Petitioner and the Respondent can no longer live together as husband and wife. They have been separated for seven (7) years. All attempts at reconciliation have not borne any fruits. This court will therefore grant the petition for divorce.

In the premises therefore, the marriage celebrated between the Petitioner and the Respondent on 3rd September 2005 at Karen Blixen Museum, Nairobi is hereby dissolved. Decree nisi dissolving the said marriage is hereby issued. The decree nisi shall be made absolute thirty (30) from the date of this judgment. As regards the issue of division of matrimonial property, the Petitioner is at liberty to file a case before this court for appropriate determination. There shall be no orders as to costs. It is so ordered.

DATED AT NAIROBI THIS 14TH DAY OF JULY, 2014

L. KIMARU

JUDGE