

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

DIVORCE CAUSE NO. 24 OF 2014

W W N.....PETITIONER

-VERSUS-

C W W.....RESPONDENT

JUDGEMENT

1. On the 16th September 2005, the Petitioner and the Respondent celebrated a marriage under the marriage Act at the office of the Registrar at Nairobi. They had prior to the said celebration been married under customary law. The Petitioner and the Respondent cohabited together as man and wife in Nairobi and were blessed with two issues of marriage in 1998 and 2003 respectively. The Petitioner disclosed that he was an employee of **[particulars withheld]** Group (K) Ltd. The Respondent did not disclose her occupation even as she clarified that she was no longer a business woman as indicated by the Petitioner.
2. The Petitioner accused the Respondent of adultery and cruelty to the Petitioner and the children of the marriage and set out particulars thereof in the Petition. In the said particulars the Petitioner accused the Respondent of devoting her time to her retailership stall and to internet vice at the expense of interacting and spending time with their children. He also stated that the Respondent travelled out of the country in the months of March, June and October 2009 and also in the months of February and June 2010 on the pretext of going to purchase stock for her business while in reality she had a rendezvous with her lover.
3. The Petitioner asserted that between June 2010 and June 2013 the Respondent abandoned her matrimonial home and her family. That throughout the currency of the marriage she failed and/or neglected to care for or help in raising the children of the marriage. The Petitioner testified during the hearing of the divorce cause and reiterated the contents of his divorce petition. He therefore seeks the dissolution of the marriage on account of the matrimonial offences set out in the divorce petition.
4. On 16th October 2014 the Deputy Registrars of this court issued certification to the effect that the pleadings were complete and that this cause should proceed as an undefended divorce cause and so it did. As it turned out however, there was an answer to the Petition and a Cross-Petition on record dated 28th March 2014 and filed on 4th September 2014, out of time and without leave of the court.
5. The Respondent too prayed for the dissolution of marriage but prayed further that the court do grant her custody of the issues of the union and alimony. She also filed a statement in her defence which in effect reiterated what she had set out in her cross-Petition.
6. This court has carefully considered the facts of this case and it is clear that the marriage between the Petitioner and Respondent has irretrievably broken down with no possibility of salvage. The Petitioner and Respondent are no longer living together and have been separated on and off since June 2010. The court is of the view that the matrimonial offences of adultery and cruelty have been proved on a balance of probabilities and that there is no collusion between the Petitioner and

Respondent in bringing this proceedings. This court will grant the petition for divorce.

7. In the premise I make the following orders:

- a. That the marriage celebrated between the Petitioner and Respondent at the Registrar's office in Nairobi on 16th September 2005 is hereby dissolved.
- b. That Decree nisi dissolving the said marriage is hereby issued to be made absolute thirty (30) days from the date of this judgment.
- c. There shall be no orders as to costs.

SIGNED DATED and DELIVERED in open court this **6th day** of **November 2014**.

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L. A. ACHODE

JUDGE