

REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Divorce Cause 123 of 2012

BMK PETITIONER

DKM RESPONDENT

J U D G M E N T

The Petitioner, BMK got married to the Respondent DKM on 20th April 1999 at the Registrar’s office in Nairobi. The marriage was blessed with three (3) children born between 1992 and 2002. According to the Petitioner, prior to their statutory marriage, she has cohabited with the Respondent as a husband and wife for a period of eight years. The Petitioner, in her petition for divorce, pleaded that her marriage to the Respondent has not been a happy one. She averred that the Respondent had treated her with cruelty. In particular, she accused the Respondent of being verbally abusive, of withholding love and affection, of subjecting her to indignity, frustration, humiliation and causing her mental anguish by constantly accusing her (without any evidence) of engaging in prostitution and infidelity. She further averred that the Respondent has been guilty of willful neglect. In particular, she accused the Respondent of failing to provide for the basic needs of the family, including paying the house rent and providing for the education of the children. She finally stated that the Respondent was guilty of desertion. She stated that on 16th May 2012, the Respondent deserted the matrimonial home and has since then not returned to the said matrimonial home. In the premises therefore, the Petitioner pleaded with the court to grant her petition for divorce and also grant her custody of the children of the marriage.

The Respondent was served with the petition for divorce. He did not enter appearance. Neither did he file any papers in opposition to the said petition. The Deputy Registrar of this court issued a certificate certifying that this divorce cause be heard as undefended divorce cause. During the hearing of the cause, this court heard oral evidence of the Petitioner. She essentially reiterated the contents of her petition for divorce. This court has carefully considered the said grounds of divorce. It was clear to this court that the marriage between the Petitioner and the Respondent has indeed irretrievably broken down. It was apparent that trust which is a hallmark of a successful marriage was no longer in existence between the Petitioner and the Respondent. When the Respondent accuses the Petitioner of infidelity and shows disrespect to her even in front of relatives and their children, that is proof that the marriage between the two is in the doldrums. Further, the fact that the Respondent deserted the matrimonial home and has neglected to take care of the needs of his family is sufficient proof that he is no longer interested in the marriage. This court therefore holds that the Petitioner proved to the required standards of proof on a balance of probabilities that indeed she is entitled to the prayer for divorce that she has sought in her petition.

In the premises therefore, the marriage celebrated on 20th April 1999 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 one month from the date of this judgment. The Petitioner shall have the custody of the minor children of the marriage. There shall be no orders as to cost.

DATED AT NAIROBI THIS 4th DAY OF APRIL, 2013

L. KIMARU

JUDGE

