

REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Divorce Cause 93 of 2011

S D G.....PETITIONER

VERSUS

HSGRESPONDENT

J U D G M E N T

The Petitioner and the Respondent were, on 22nd December 1995, married at Kanjata Crescent Lavington Nairobi. The marriage was celebrated under the **Marriage Act**. According to the Petitioner, the couple cohabited together as husband and wife in Nairobi. The marriage was blessed with one child born on 19th January 2000. In his petition, the Petitioner complains that since the celebration of the said marriage, the same has not been a happy one. She accuses the Respondent of treating her with cruelty. In the particulars of cruelty, the Petitioner inter alia, avers that the Respondent had neglected his duty as a husband and father. She further states that the Respondent had humiliated and embarrassed her in the presence of her parents. She accused the Respondent of drunkenness and risking the life of their daughter by driving while drunk. She further averred that since 2007 the Respondent had committed adulterous affairs with various women and had on several occasions exposed the Petitioner to sexually transmitted diseases. The Petitioner was of the opinion that due to the Respondent's behaviour, the marriage had irretrievably broken down with no possibility of salvage. She therefore asks the court to grant her petition for divorce, and grant her custody of the only child of the marriage and also order the Respondent to pay maintenance and alimony.

In response to the petition for divorce, the Respondent filed answer to the petition and cross petitioned to be divorced from the Petitioner. In the 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 extra marital affairs. The Respondent particularly denied the particulars of cruelty put forward by the Petitioner and put the Petitioner to strict proof thereof. The Respondent stated that it was due to the Petitioner's neglect and being emotionally unavailable in 2007 that he was forced to enter into a brief extra marital affair which ended soon thereafter. He denied the allegation that he had engaged in several extra marital affairs since then.

In his cross petition for divorce, the Respondent averred that since the celebration of the said marriage the Petitioner had treated him in cruelty. He averred that the Petitioner had been guilty willful neglect of his welfare and that of the child of the marriage. He accused the Petitioner of failing to contribute to the financial needs of the family. He averred that the Petitioner had shown him utter contempt and lack of commitment towards her matrimonial commitments. For these reasons, the Respondent was of the view that his marriage to the Petitioner had caused him to suffer mental distress and anguish which could only be remedied by this court granting his cross petition for divorce. He therefore urged the court to declare his marriage to the Petitioner dissolved. He further prayed to be granted custody of the child of the marriage. He also prayed for the court to compel the Respondent to provide reasonable maintenance for the child of the marriage.

During the hearing of the petition for divorce, this court heard evidence adduced by the Petitioner. She basically reiterated the contents of her petition for divorce. She urged the court to dissolve the marriage since every effort at salvaging the same had failed. The Respondent opted to give no 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 in court that indeed the marriage of the Petitioner and the Respondent had irretrievably broken down. It was apparent that since

2007, the marriage between the Petitioner and the Respondent has been in the doldrums. There appears to be no trust between the Petitioner and the Respondent. This lack of trust has fuelled suspicion that has resulted in the complete termination of intimacy between the Petitioner and the Respondent. The accusation and counter-accusation of cruelty in the petition and cross petition should thus be seen in this context. The Petitioner accused the Respondent of adultery. The Respondent admitted committing adultery on one occasion. However, he explains his behaviour to have been caused by denial of his conjugal rights by the Petitioner. Adultery per se does not result into a breakdown of a marriage. In the present case, it was evident that the adultery was just one of the symptoms of the breakdown of the marital relationship between the Petitioner and the Respondent. For the above reasons, it was clear to this court that indeed there is no possibility that the marriage between the Petitioner and the Respondent can be salvaged.

I grant the petition for divorce. The marriage solemnized on 22nd December 1995 between the Petitioner and the Respondent is hereby dissolved. Decree nisi dissolving the said marriage is hereby issued. The said decree nisi shall be made absolute within thirty (30) days of the date of this judgment. As to the issue of custody and maintenance of the child, the same shall be dealt with in the first instance by the Children's Court. This is because the Children's Court has the first jurisdiction to deal with such issues. The parties shall be liberty to present their case before the Children's Court Nairobi. There shall be no orders as to costs. It is so ordered.

DATED AT NAIROBI THIS 4th DAY OF APRIL, 2013

L. KIMARU

JUDGE