



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**DIVORCE CAUSE NO.63 OF 2011**

**B G P.....PETITIONER**

**VERSUS**

**K B B.....RESPONDENT**

**JUDGMENT**

The Petitioner and the Respondent were married on 4<sup>th</sup> December 1996 at the Registrar's Office in Nairobi. The marriage was celebrated under the **Marriage Act**. After the celebration of the marriage, the Petitioner and the Respondent resided in various estates in Nairobi. The marriage has been blessed with two issues, twins, born on 28<sup>th</sup> July 2005. According to the Petitioner, the marriage has not been a happy one. The Petitioner accuses the Respondent of committing the matrimonial offence of cruelty. In particular, the Petitioner averred that the Respondent was argumentative and quarrelsome. She constantly engaged him in unnecessary quarrels that caused him to suffer stress, anxiety and mental anguish. The Petitioner complains that the Respondent had never got along with his family and had concentrated her love and care to herself and the children to his exclusion. The Petitioner accused the Respondent of looking down upon him and failing to consider him as a husband. The Petitioner averred that because of the foregoing, he had ceased to cohabit with the Respondent in 2010. He was of the view that his marriage to the Respondent was no longer sustainable. He urged the court to grant the petition for divorce.

Upon being served with the petition for divorce, the Respondent filed an answer to the petition. The Respondent denied the allegation that she had treated the Petitioner with cruelty. She averred that she had always respected the Petitioner as her husband. She denied the allegation that she was of quarrelsome personality and put the Petitioner to strict proof thereof. She averred that she was fully committed to the marriage especially taking into consideration the fact that she had undergone an in-vitro fertilization to enable them to have the children that were born to the marriage. In the premises therefore, the Respondent was of the view that there was no reason for this court to grant the petition for divorce. She urged the court to dismiss the petition for divorce with costs.

Counsel for the parties herein appeared before this court on 7<sup>th</sup> March 2013. The hearing of the petition was fixed for the 2<sup>nd</sup> May 2013. On 2<sup>nd</sup> May 2013, it was only the Petitioner and her advocate who were present in court. This court proceeded with the hearing of the petition, the absence of the Respondent notwithstanding. The Petitioner reiterated the contents of his petition for divorce. He told the court that his marriage to the Respondent had deteriorated to the extent that they had separated three and a half (3½) years ago. He told the court that he had rented a house for the Respondent and the children. He pays all the expenses of the children. He was of the view that there was no possibility that the marriage would be salvaged. He therefore asked the court to grant this petition for divorce.

This court has carefully considered the pleadings filed by the parties herein in support of their respective opposing positions. The court has also considered the oral evidence adduced by the Petitioner. The Respondent did not attend court when the petition was fixed for hearing. The issue for determination by this court is whether the Petitioner adduced sufficient evidence to enable this court grant the petition for divorce that the Petitioner craves for. It was clear from his pleadings and evidence in court that indeed the Petitioner established that his marriage to the Respondent had irretrievably broken down. Because of the breakdown in communication between the Petitioner and the Respondent, their relationship took a turn for the worse when the two were separated in 2010. Cohabitation ceased. Since then, the Petitioner and

the Respondent have been living separately. If there was any chance of reconciliation, then the same should have been attempted in the past three years. The evidence adduced by the Petitioner was uncontroverted. This court holds that the Petitioner established the matrimonial offence of cruelty to the required standard of proof.

In the premises therefore, the marriage celebrated between the Petitioner and the Respondent on 4<sup>th</sup> December 1996 at the Registrar's Office in Nairobi 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. The Petitioner shall continue to house and maintain the Respondent and the children of the marriage. He shall also continue providing for their upkeep and the education of the children. In case of any disagreement, either party shall be at liberty to approach the Children's Court for further direction regarding the custody and maintenance of the children. There shall be no orders as to costs. It is so ordered.

**DATED AT NAIROBI THIS 8<sup>TH</sup> DAY OF OCTOBER, 2013**

**L. KIMARU**

**JUDGE**