

REPUBLIC OF KENYA

COURT OF KENYA AT NAIROBI

DIVORCE CAUSE NO.132 OF 2009

P A A W.....PETITIONER

VERSUS

P W O.....RESPONDENT

JUDGMENT

The Petitioner and the Respondent were married on 8th December 1990 at the District Commissioner's Office. The marriage was blessed with three issues born respectively on 4th August 1988, on 21st September 1994 and on 23rd June 2001. According to the Petitioner, the marriage has not been a happy one. She accuses the Respondent of committing the matrimonial offences of desertion, cruelty and adultery. The Petitioner has particularized these matrimonial offences in her petition for divorce. The Petitioner and the Respondent have been separated since 28th July 2004 when the court in **Nairobi Chief Magistrate's Court Separation and Maintenance Cause No.8 of 2003** granted judicial separation. For the reasons stated in the petition, the Petitioner was of the view that her marriage to the Respondent had irretrievably broken down with no possibility of salvage. She urged the court to grant her petition for divorce and dissolve the marriage. She also asked the court to order that the property that had been acquired during the subsistence of the marriage to be shared equally between herself and the Respondent. She further prayed that the Respondent be compelled to maintain her and the children of the marriage.

When the Respondent was served, he duly entered appearance and filed answer to the petition. He denied the averments made by the Petitioner to the effect that he had committed the matrimonial offences of desertion, cruelty and adultery. He put the Petitioner to strict proof thereof. He averred that since September 2009, the Petitioner had permanently emigrated to Australia and therefore lacked capacity to prosecute the petition for divorce. He explained that it was the Respondent who on her own volition left the matrimonial home in March 2003 without any prompting by the Respondent. The Respondent averred that it was the Petitioner who was guilty of the matrimonial offence of adultery since she had sired the last born child with her male friend. The Respondent therefore urged the court to dismiss the petition with costs.

The petition was heard by Mugo J. She heard the evidence of the Petitioner before she ceased to have jurisdiction in the Family Division. When the matter was placed before this court, counsel for parties to this divorce cause agreed that the hearing proceeds from where it had reached. The Respondent then told the court that he would offer no evidence in response to the evidence adduced by the Petitioner. The issue for determination by this court is whether the Petitioner adduced sufficient evidence to enable this court grant her petition for divorce. This court has read the pleadings filed by the parties in this petition. It has also considered the oral evidence adduced by the Petitioner. It was clear to the court that indeed the marriage between the Petitioner and the Respondent had irretrievably broken down with no possibility of salvage. The Petitioner and the Respondent have been separated since 2003 when the subordinate court granted the request by the Petitioner to be judicially separated from the Respondent. The Petitioner relocated to Australia in September 2009. Since then, she has been a resident of that country. The matrimonial offence of desertion was established to the required standard of proof on a balance of probabilities. If the Petitioner and the Respondent were to be reconciled, reconciliation would have been attempted in the intervening period. This court will therefore grant the petition for divorce.

In the premises therefore, the marriage between the Petitioner and the Respondent which was celebrated on 8th December 1990 at the District Commissioner's Office, 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 have custody of the youngest child of the marriage. The other two children are adults. As regard the issue of division of matrimonial property, the Petitioner is at liberty to file an appropriate case before this court. There shall be no orders as to costs. It is so ordered.

DATED AT NAIROBI THIS 8th DAY OF OCTOBER, 2013

L. KIMARU

JUDGE