

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

DIVORCE CAUSE NO. 192 OF 2012

P MPETITIONER

VERSUS

E K O.....RESPONDENT

J U D G M E N T

The Petitioner and the Respondent were married on 19th June 2004 at the St. Stephen's ACK church, Jogoo Road, Nairobi. The marriage was celebrated under the **Marriage Act**. According to the Petitioner, the Respondent deserted the matrimonial home in 2007. Since their separation, the Petitioner and the Respondent have lived separate lives. The Petitioner further accuses the Respondent of being cruel to her. In the particulars set out in the Petition for divorce, the Petitioner averred that the Respondent had denied her conjugal rights. It is on account of the above matrimonial offences that the Petitioner is of the view that her marriage to the Respondent had irretrievably broken down with no possibility of salvage. She therefore urges the court to dissolve the marriage.

When the Respondent was served, he duly entered appearance and filed answer to the petition and cross petition. He denied the allegation made in the petition for divorce that he had treated the Petitioner with cruelty. He averred that it was the Petitioner who had treated him with cruelty. He attributes the genesis of his difference with the Petitioner to lack of love and affection by the Petitioner towards him. He averred that it is the Petitioner who left the matrimonial home on her own volition. In the premises, he urged the court to dissolve the marriage. He also prayed to be granted costs of the petition.

At the hearing of the petition, this court heard oral evidence adduced by the Petitioner. She testified that the Respondent stopped visiting her in the year 2007 and that her efforts to communicate with him had failed. She stated that she had been separated from the Respondent since 2007.

This court has carefully considered the pleadings filed by the parties to these divorce proceedings. From the facts of this case, it is clear that the marriage between the Petitioner and the Respondent had indeed irretrievably broken down with no possibility of salvage. The Petitioner established to the required standard of proof on a balance of probabilities the matrimonial offence of desertion. The Petitioner and the Respondent have been separated for more than five (5) years. Neither the Petitioner nor the Respondent seems to have any wish or desire to sustain the marriage. This court therefore has no option but to grant the petition for divorce.

In the premises therefore, the marriage celebrated between the Petitioner and the Respondent on 19th June 2004 at the St. Stephen's ACK church, Jogoo Road, 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. There shall be no orders as to costs.

DATED AT NAIROBI THIS 1ST DAY OF NOVEMBER 2013

L. KIMARU

JUDGE

