

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

DIVORCE CAUSE NO.84 OF 2008

R.D.M.....PETITIONER

VERSUS

E.M.G.....RESPONDENT

J U D G M E N T

The petitioner and the respondent were in 2nd June 1999 married under the **Marriage Act** at the Registrar's office in Nairobi. After the said marriage, the petitioner and the respondent cohabited as husband and wife in various estates in Nairobi and in Nakuru. The marriage was blessed with one child born on 14th February 2001. The petitioner adopted a child the respondent had from a previous relationship. The said child was born on 24th May 1995. According to the petitioner, his marital relationship with the respondent deteriorated from the year 2002 on account of the respondent's drunkenness and cruelty. The petitioner accused the respondent of being drunk or engaging in drinking sprees to an extent that she failed to take care of the children of the marriage. He averred that the respondent, due to her drinking problem, had caused unnecessary tension in the marriage due to her instigation of the constant fights. The petitioner particularized several instances of cruelty on the part of the petition. The petitioner averred that in December 2004, the respondent deserted the matrimonial home leaving the children under his custody. Since then, the respondent had not returned to the matrimonial home. The petitioner stated that efforts at reconciliation proved futile on account of the respondent's intransigence and inconsistent behaviour. It was for the above reasons that the petitioner was of the view that his marriage to the respondent could no longer be sustained. He therefore urged the court to grant his petition for divorce. He further prayed that he be granted sole custody of the children of the marriage.

The respondent was served with a copy of the petition. She did not enter appearance. Neither did she file an answer to the petition. This court was satisfied that the respondent was indeed served with the petition. It ordered the hearing of the petition to proceed, the absence of the respondent notwithstanding. The petitioner basically reiterated the contents of the petition in his oral evidence. I have carefully considered the said evidence. It was apparent to this court from the evidence adduced by the petitioner that his marriage to the respondent has indeed irretrievably broken down. The petitioner tolerated the respondent's alcohol abuse until it reached such an extent that the said abuse started affecting their marital relationship. From the petitioner's testimony, it was clear that the respondent abandoned her parental responsibilities to the children of the marriage in preference to alcohol. The respondent deserted the matrimonial home in December 2004. Since then, she has not returned to the said matrimonial home. Attempts at reconciliation have not borne any fruit. It is therefore unlikely that the

petitioner and the respondent will return to a state of happy marriage. The petitioner established to the required standard of proof the grounds of cruelty and desertion in his petition for divorce.

In the premises therefore, this court will allow the petition for divorce. The marriage celebrated between the petitioner and the respondent on 2nd September 1999 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 have the custody of the children of the marriage. There shall be no orders as to costs.

DATED AT NAIROBI THIS 4TH DAY OF MARCH, 2011

L. KIMARU

JUDGE