

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

DIVORCE CAUSE NO.56 OF 2010

T.W.K.....PETITIONER

VERSUS

A.W.N.....RESPONDENT

J U D G M E N T

The petitioner and the respondent were married under **Marriage Act** on 11th January 2006 at the Registrar's office in Nairobi. The petitioner and the respondent cohabited together as husband and wife at an estate in Nairobi. The marriage was not blessed with any children. According to the petitioner, about four months after the said marriage, the respondent started treating him with cruelty. In particular, the petitioner complained that the respondent insulted him in front of his friends and further failed to perform his wifely duties. The petitioner accused the respondent of showing contempt for the marriage by her various utterances which conveyed the message that the respondent regretted having got married to the petitioner. According to the petitioner, the respondent deserted the matrimonial home in March 2007. Since then, the respondent had failed to return to the matrimonial home. It is the petitioner's assertion that the respondent was guilty of the matrimonial offence of desertion. The petitioner averred that his attempt at reconciliation was rebuffed by the respondent. It is for the above reasons that the petitioner formed the opinion that his marriage to the respondent had irretrievably broken down with no chance of salvage and therefore should be dissolved.

The respondent was served with the petition for divorce. The respondent did not enter appearance. Neither did she file any pleadings in answer to the petition. The Deputy Registrar of this court issued a certificate certifying the divorce cause ready for hearing. This court was satisfied that the respondent was duly served and ordered the hearing of the petition to proceed, the absence of the respondent notwithstanding. In his oral testimony before court, the petitioner basically reiterated the contents of the petition. He added the fact that since the separation, the respondent had given birth to a baby girl. The petitioner told the court that he was not the father of the child. Having evaluated the entire facts of this case, it was this court's view that the petitioner proved, to the required standard of proof on a balance of probabilities, the grounds of cruelty and desertion. It was apparent from the petitioner's testimony that the respondent regretted getting married to the petitioner soon after the celebration of the said marriage. No sooner was the respondent married to the petitioner than she decided to desert from the matrimonial home. The respondent has been away from the matrimonial home since March 2007. It is now four years since the respondent left the matrimonial home. It was clear from the petitioner's evidence that the chance that the petitioner and the respondent will be reconciled diminished with each passing year. The respondent has moved on with her life. She has even conceived and given birth to a child by

another man. The petitioner established that indeed his marriage to the respondent had irretrievably broken down with no chance of salvage.

In the premises therefore, this court will grant the petition for divorce. The marriage solemnized between the petitioner and the respondent on 11th January 2006 at the Registrar's office in Nairobi is hereby dissolved. *Decree nisi* dissolving the said marriage is hereby issued. The said *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 4TH DAY OF MARCH, 2011

L. KIMARU

JUDGE