



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MOMBASA**

**FAMILY DIVISION**

**DIVORCE CAUSE NO. 16 OF 2012**

**B N M.....PETITIONER**

**VERSUS**

**N M.....RESPONDENT**

**JUDGMENT**

1. B N M the Petitioner then a bachelor married N M the Respondent then a spinster on 5.8.06 at the [particulars withheld] Church in Likoni, Mombasa. They cohabited at [particulars withheld], Kongowea, Mombasa for 2 years. The marriage is not blessed with any children. Differences arose between the parties and the Petitioner opted to file the Petition herein dated 1.3.12, seeking dissolution of the marriage. The ground upon which the Petitioner seeks divorce is the irretrievable breakdown of the marriage.

2. The matter proceeded as undefended as the Respondent though served with the Petition and Notice to Appear failed to file appearance.

3. In his testimony in support of the Petition, the Petitioner informed the Court that the breakdown of the marriage was occasioned by the Respondent having an affair with a military man. When he discovered the affair, she threatened to finish him. She also stopped cooking for him. Efforts by their best man to reconcile them in 2008 were fruitless. One day however, he got home and found that she had cooked for him. He got suspicious and when he checked the dustbin, he found an opened packet of rat poison. He declined to eat the food but instead he gave it to the cat. The following morning the cat had died. When he questioned her, she became abusive. The Petitioner called both sets of parents and a meeting was held at his parents' home in Kilifi. It was resolved that they separate and try to resolve their differences. The parties talked amongst themselves and agreed to reconcile. After 1 week however, the Respondent threatened the Petitioner with a knife forcing him to flee from the house. Save for his clothes, he left everything behind including a cyber cafe business he had established for the Respondent. Since he left the matrimonial home in July 2008, the parties have not been together again. All attempts at reconciliation have failed. He now seeks divorce to enable him move on with his life.

4. The grounds upon which a Christian marriage may be dissolved are stipulated in Section 65 of the Marriage Act, 2014 and they include:

***(a) one or more acts of adultery committed by the other party;***

***(b) cruelty, whether mental or physical, inflicted by the other party on the petitioner or on the children, if any, of the marriage;***

***(c) desertion by either party for at least three years immediately preceding the date of presentation of the petition;***

***(d) exceptional depravity by either party;***

***(e) the irretrievable breakdown of the marriage”***

5. The Petitioner makes serious allegations of threats to his life by the Respondent. She once tried to poison him with food containing rat poison. He gave the food to the cat which died in his place. On another occasion she threatened him with a knife making him flee. Although the testimony is uncontroverted, no report of these attempts on his life was made to the police. This notwithstanding, for almost 10 years since July 2008, the parties have not resumed cohabitation and all attempts at reconciliation have failed. For this reason the Court finds that the marriage herein has irretrievably broken down. In the circumstances, I do pronounce a decree of divorce and order that the marriage between the Petitioner and the Respondent **solemnized on 5.8.06** at the [particulars withheld] Church in Likoni, Mombasa be and is hereby dissolved. Decree *nisi* to issue and the same to be made absolute within 1 month.

**DATED, SIGNED and DELIVERED in MOMBASA this 9<sup>th</sup> day of February 2018**

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**M. THANDE**

**JUDGE**

**In the presence of: -**

..... **for the Petitioner**

.....**for the Respondent**

.....**Court Assistant**