



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**FAMILY DIVISION**

**DIVORCE CAUSE NO. 107 OF 2015**

**R G A ..... PETITIONER**

**VERSUS**

**J T M ..... RESPONDENT**

**JUDGEMENT**

1. Marriage was celebrated between the parties herein on 18<sup>th</sup> December 1990 at the Registrar's Office, Nairobi. A certificate of marriage serial number [Particulars withheld] was issued to them in accordance with the Marriage Act, Cap 150, Laws of Kenya (now repealed). The parties cohabited thereafter at various addresses within Nairobi, Kenya. The couple was blessed with issue, three (3) children – S W R, F B M Rashid and H N R (all adult now).

2. It is pleaded that since the celebration of the marriage the respondent has been guilty of cruelty, desertion and adultery. The respondent is said to have deserted the petitioner by moving out of the matrimonial home and eventually relocating to southern Africa. She is said to have thereafter engaged in an adulterous association with men known and unknown to the petitioner, and has since had a child known as M with a man known as C D C. He pleads that the marriage has, as a result, completely broken down.

3. Upon being served with the divorce papers, the respondent entered appearance on 13<sup>th</sup> January 2016 and filed a reply to the petition and counter-petition on 28<sup>th</sup> January 2015. In her reply the respondent largely denies the allegations made against her by the petitioner, and asserts that it was the petitioner who was cruel to her and the children and it was him who had committed acts of desertion. In her counter-petition for divorce and vacant possession of LR No. 24690 Lang'ata, she describes him as a habitual drunkard who spent most of his free time drinking hence denying her her conjugal rights, and a pathological liar who had failed to disclose to her that he had had a son out of an extra-marital affair. She asserts that the petitioner deserted the matrimonial home and neglected the children once she was reassigned to Zambia. She accuses him of having grabbed her house where he has installed his relatives.

4. On 28<sup>th</sup> July 2016, the Deputy Registrar cleared the petition to proceed as defended.

5. The oral hearing happened on 25<sup>th</sup> January 2018. The Petitioner testified but the respondent did not. His testimony gave vent to the allegations made in his petition, and I do not think it would be necessary to recite the same as it is on record. The respondent did not attend court, neither did her lawyers, despite the hearing date having been obtained by consent. She did not therefore breathe life to the allegations made in her reply and counter-petition. The petitioner's case therefore stands uncontroverted.

6. From the material placed before me it is plain that the marital relationship between the petitioner and the respondent has totally broken down. I have noted that cohabitation has been broken, and parties have been living separately or apart for quite some time. I note in particular that the respondent lives with another man, with whom she has a daughter. The marriage no doubt has practically come to an end, and cannot be salvaged.

7. In the circumstances, I am moved to make the following final orders:-

- (a) That the marriage between the petitioner and the respondent, celebrated on 18<sup>th</sup> December 1990, is hereby dissolved;**
- (b) That decree *nisi* shall issue forthwith, to be made absolute after thirty (30) days;**
- (c) That the counter-petition is hereby dismissed; and**
- (d) That there shall be no order as to costs.**

**DATED, SIGNED and DELIVERED at NAIROBI this 14<sup>TH</sup> DAY OF JUNE, 2018.**

**W. MUSYOKA**

**JUDGE**