



**REPUBLIC OF KENYA**

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

**FAMILY DIVISION**

**DIVORCE CAUSE NO 101 OF 2014**

**D S N A.....PETITIONER**

**VERSUS**

**L A O.....RESPONDENT**

**JUDGMENT**

1. The Petitioner moved this court by way of a Petition dated the 12<sup>th</sup> of May 2014 against the Respondent seeking for orders that the marriage between the two be dissolved; costs of the suit and a further prayer that the Respondent be charged with the offence of bigamy.
2. The Petitioner described himself as an insurer and business man. He further described the Respondent as a banker.
3. The Petitioner's case is that the two entered into a civil marriage before the Registrar of Marriages in Mombasa on the 16<sup>th</sup> of January 2009 and thereafter cohabited as husband and wife in Kajiado.
4. The marriage has no issues, though the Petitioner has three children whose custody he shares with the children's mother.
5. The Petitioner cited cruelty and adultery as his grounds for seeking for the divorce. He alleged that the Respondent lied to the him about her Educational background, was involved in fraudulent deals, was a drunk, abusive, disrupted the Petitioner's businesses, refused to allow the Petitioner his conjugal rights and misused the Petitioner's assets.
6. Further the Petitioner alleged that the Respondent was in an overt relationship with another man during the subsistence of the marriage.
7. The Respondent entered an appearance on the 20<sup>th</sup> of June 2014. On the 24<sup>th</sup> of August an Answer to the Petition and a Cross Petition were filed. It is to be noted that on the 31<sup>st</sup> of July 2014 before the answer to the Petition and the Cross Petition were filed the suit was certified to be an undefended cause.
8. Since there was a response on record this court directed that a hearing notice be served upon the Respondent. Despite Notice being served as reflected in the affidavit of service dated 2<sup>nd</sup> August 2018, there was no appearance of either the counsel or the Respondent on the date the matter was scheduled for hearing and the matter proceeded for hearing their absence notwithstanding.
9. At the hearing the Petitioner relied on his grounds as pleaded. He further stated that his marriage with the respondent had failed in that the Respondent had abused and attacked the Petitioner severally, he pointed to a scar, which he said he received in an attack by the respondent. He also stated that the Respondent slept out of the matrimonial home; she would disappear on Fridays and appear on Sundays. Further that the Respondent lied about her educational background having told the Petitioner that she was a graduate when she was not. The Petitioner put her in school but she was expelled due to a scandal she was involved in.
10. The issue herein for determination is whether the Petitioner has made out a case for the dissolution of his marriage to the respondent and who pays the costs of the suit.
11. Since the Respondent did not appear to defend herself and to prosecute her Cross Petition the averments of the Petitioner remain unchallenged and I therefore find that the Respondent was cruel to the Petitioner due to her action and deed as narrated by the Petitioner and has since March 2012 stayed away from the Matrimonial home, as a result the marriage between the two has irretrievably broken down.
12. Based on the above findings there will be no reason to hold the two to a marriage that has failed to work and where for the last 6 years the parties have stayed apart.

13. Consequently,

**a. The marriage between the Petitioner and the Respondent that was contracted on the 16<sup>th</sup> of January 2009 be and is hereby dissolved.**

**b. Each party will meet his/her cost of the suit.**

**DATED, SIGNED and DELIVERED at NAIROBI this 29<sup>th</sup> DAY OF November, 2018.**

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**ALI-ARONI**

**JUDGE**