



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

**FAMILY DIVISION**

**DIVORCE CAUSE NO. 59 OF 2015**

**D W K .....PETITIONER**

**VERSUS**

**A O K .....RESPONDENT**

**JUDGMENT**

1. DWK the Petitioner herein married A O K the Respondent herein on 2.9.05 at the **Registrar's Office in Mombasa**. The couple was issued with marriage certificate serial number [Particulars Withheld] which was produced in Court as proof of the fact of the marriage. **Following the marriage, the couple cohabited in [Particulars Withheld] and in [Particulars Withheld]. The marriage is blessed with 2 children, E L S born on 2.4.03 and Y C M born on 9.7.08.**

2. The Petitioner has filed the Petition herein dated 21.9.15, seeking the dissolution of her marriage to the Respondent. The grounds upon which the Petitioner seeks divorce are cruelty desertion and adultery.

3. Although the Respondent was served with the Petition and Notice to Appear, he failed to file appearance. The matter therefore proceeded as an undefended cause.

4. In her testimony in support of her Petition, the Petitioner stated the marriage was happy until after the birth of the first child. She began to receive calls from other women claiming that they were with the Respondent. On questioning him, the Respondent would respond by shouting at the Petitioner. The circumstances took a toll on her and she requested a job transfer to Nairobi which she got and moved there. The Respondent followed her and she decided to give him another chance. After the birth of the second child in 2008, the calls from other women began. In 2009 while the Petitioner was recovering from thyroid surgery, the Respondent left the matrimonial home and abandoned the family. The Petitioner lost her job and moved to her parents' home in Limuru with the children. Since then the Respondent has not returned nor has he supported the family in any way. She claims that the respondent lives with another woman in Malindi and they have 3 children. She prayed for dissolution of the marriage, custody of the children and maintenance for them.

5. From the testimony of the Petitioner, it is evident that the marriage herein has irretrievably broken down. The marriage herein was conducted at the Registrar's office in Mombasa. It is therefore a civil marriage. The Marriage Act, 2014 at Section 66(2) provides for the grounds upon which a civil marriage may be dissolved. These include:

**a. adultery by the other spouse;**

- b. cruelty by the other spouse;**
- c. exceptional depravity by the other spouse;**
- d. desertion by the other spouse for at least three years; or**
- e. the irretrievable breakdown of the marriage”**

6. The Petitioner seeks dissolution of the marriage on the ground of cruelty adultery and desertion. The Respondent treated the Petitioner with cruelty by shouting at her when asked about the women who called the Petitioner. He also failed to support their children. He has been adulterous with the women who called the Petitioner and is currently living with a woman in Malindi and they have 3 children. The Respondent deserted the Petitioner for a period of over 6 years to the time of filing the Petition herein. The testimony of the Petitioner is uncontroverted and I have no reason to doubt the same. The parties and have not resumed cohabitation since 2009 when the Respondent left the matrimonial home. It would appear that there is no hope for the marriage herein which has irretrievably broken down.

7. In view of the foregoing, I pronounce a decree of divorce and order that the marriage between the Petitioner and the Respondent **solemnized at the Registrar’s Office in Mombasa on 2.9.05** be and is hereby dissolved. Decree *nisi* to issue and the same to be made absolute within 1 month. The matter concerning the custody of the children of the marriage and their maintenance may be determined by the Children’s Court which has jurisdiction in the first instance. Each party to bear own costs.

**DATED, SIGNED and DELIVERED in MOMBASA this 31<sup>st</sup> day of March 2017**

**M. THANDE**

**JUDGE**

**In the presence of: -**

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

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

..... **Court Assistant**