



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

**NANYUKI**

**DIVORCE NO. 3 OF 2016**

**C W M.....PETITIONER**

**VERSUS**

**E W M.....RESPONDENT**

**JUDGMENT**

1. **C W M and E W M** who are both soldiers serving in the Kenya defence forces got married in a Civil Marriage on 25<sup>th</sup> February, 2011. That marriage was preceded by a period when the two lived together. They were blessed with one child **W A W** who was born in the year **2008**.

2. C W M has petitioned for dissolution of their marriage on the ground that the marriage has irretrievably broken down. Although E W M was served with the petition she did not file a response to the petition. On 19<sup>th</sup> January, 2017 E W M attended court and requested for time to file her response. The court granted her 15 days to file her response. To date however E W M has not filed that response.

3. C W M testified in support of his petition and stated that he and E W M had not lived together since the year 2011. C W M stated that he was seeking dissolution of the marriage because it became difficult to live with E W M. He gave an instance when he was telephoned, while serving in the army in Loiboi, and informed by the wife of his best man that E W M was having an affair with that best man. C W M on receiving that information sought and obtain time off from duty. He travelled to Nanyuki but did not find his wife E W M at the army barracks. She had moved out without informing him. After making inquiry he traced E W M's residence but did not find her or the child of the marriage at that house. He traced them at a local hotel where they were in the company of another man. It seems after that discovery their marriage irretrievably broke down and E W M continuously provoked C W M to a fight. C W M often thereafter used to arrive home late at night. E W M on being transferred to serve at Kahawa barracks left the child of the marriage with C W M. The two have not lived together since then. C W M further stated that his wife E W M was not trust worthy because she would apply for loans which would be guaranteed by people who knew C W M but whom E W M cautioned not to inform C W M. C W M also stated that because he had lived with the child of marriage since their separation he was fit to have custody of the child and E W M be granted reasonable visitation rights.

4. **Under Section 66 (6)** of the Marriage Act No. 4 of 2014 a marriage is said to have irretrievably broken down where:

*a. spouse commits adultery;*

- b. a spouse is cruel to the other spouse or to any child of the marriage;*
- c. a spouse willfully neglects the other spouse for at least two years immediately preceding the date of presentation of the petition;*
- d. the spouses have been separated for at least two years, whether voluntary or by decree of the court, where it has;*
- e. a spouse has deserted the other spouse or at least three years immediately preceding the date of presentation of the petition.*
- f. a spouse has been sentenced to a term of imprisonment of the for life or for a term of seven years or more;*
- g. a spouse suffers from incurable insanity , where two doctors, at least one of who is qualified or experienced in psychiatry, have certified that the insanity is incur able or that recovery is improbable during the life time of the respondent in the light of existing medical knowledge; or*
- h. Any other grounds as the court may deem appropriate.*

5. Having received the testimony of C W M and since his petition and that evidence were uncontradicted by E W M I find that their marriage has irretrievably broken down. It is clear that due to the acts of cruelty on the part of E W M the two of them had grown apart, having nothing in common and not communicating. It is in view of the above finding that I order the marriage of C W M and E W M solemnized on 25<sup>th</sup> February, 2011 be and is hereby dissolved.

**I order:**

- a. A decree Nisi to issue forthwith,**
- b. That decree shall be made absolute within 30 days from today's date.**
- c. The custody of the child of the marriage is awarded to C W M with E W M being granted visiting right as shall be agreed with C W M.**
- d. There shall be no orders as to costs.**

*Dated and Delivered at Nanyuki this 21<sup>st</sup> September, 2017*

MARY KASANGO

**JUDGE**

**Coram**

Before Justice Mary Kasango

Court Assistant: Njue/Maria Stella

Petitioner .....

Respondent .....

For petitioner .....

**COURT**

Judgment delivered in open court

MARY KASANGO

**JUDGE**