



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MOMBASA**  
**FAMILY DIVISION**  
**DIVORCE CAUSE NO. 28 OF 2013**

**V A O.....PETITIONER**

**VERSUS**

**M A S .....RESPONDENT**

**JUDGMENT**

1. The Petitioner **V A O** has filed this petition dated 7.5.13 seeking the dissolution of her marriage to the Respondent **M A S**. The Respondent filed an Answer to Petition and Cross Petition.
2. The ground for divorce as set out in the Petition is cruelty, the particulars whereof are that in the course of the marriage the Respondent has occasionally verbally abused and physically assaulted the Petitioner in the presence of the children of the marriage, friends and relatives; that the Respondent is arrogant, rude and discourteous to the Petitioner and picks unnecessary fights with the Petitioner; that the Respondent has withdrawn all financial support for the Petitioner and the children; that the Respondent has humiliated the Petitioner in the presence of her family and friends by falsely accusing the Petitioner of adultery; that the Respondent has failed/refused to meet the Petitioner's parents officially; that the foregoing conduct of the Respondent had caused her mental, psychological and emotional anguish; She further avers that all efforts at reconciliation had failed and that the marriage has irretrievably broken down.
3. The Respondent in his Reply Answer to Petition dated 28.5.13 denies the allegations of cruelty by the Petitioner. In his Cross Petition, the Respondent accuses the Petitioner of cruelty, desertion and adultery with one J alias Jo who he has enjoined in his Cross Petition. The particulars of cruelty are that the Petitioner forced the Respondent to flee the matrimonial home after she and the said J assaulted him. He claims that the Petitioner denied him conjugal rights. He further claims that the Petitioner has severed contacts with him and whenever she visits him, she does so in the presence of J. The Respondent further alleges that the Petitioner occasionally slept out of the matrimonial home without his knowledge or authority while he was on night duty. The Respondent states that the Petitioner deserted the matrimonial home two years ago and cohabits with the said J to date. He prays that the marriage herein be dissolved.
4. In her answer dated 19.6.13 the Petitioner denies all the allegations contained in the Reply to Petition and Cross Petition and puts the Respondent to full proof thereof.
5. At the hearing, the Petitioner testified that she and the Respondent got married on 1.4.05 at the Registrar's Office in Mombasa. Following their marriage, they cohabited in Mishomoroni. They were blessed with two children namely N N and R K. She further testified that the Respondent has

during the continuance of the marriage treated her with cruelty by physically and verbally abusing here in the presence of their children, family and friends; that she left the matrimonial home on 15.8.11 due to the abuse and has not returned since; that sometime in 2013, the Respondent beat her up and broke her knee and she was in crutches for three months; that the Respondent was suspicious of her and accused her of having an affair with any man she talked to; that she was the sole provider in the home and for the children. On the Respondent's allegation that she was in an adulterous relationship with one J O, the Petitioner denied and stated that J was just a friend. She claimed that she has made attempts at reconciliation but the Respondent was not interested. She prayed that the marriage be dissolved.

6. The Respondent on his part confirmed that he and the Petitioner have been separated since 2011. He claimed that the Petitioner was having an affair with one J; that she has been with him from the time they separated to date; he described an incident in 2012 where following a tip off he went to a club known as the Lounge and found the Petitioner drinking and dancing in the company of the said J and other friends; that upon confronting her, there was a scuffle which led to the Respondent being ejected therefrom; thereafter he went to wait for her at her house and she was brought home by the said J at about 5 am; that there was confrontation and the Petitioner was injured; that the petitioner reported at the police station that she had been attacked by her former boyfriend. The Respondent states that he has been faithful to the Petitioner and denies that he ever abused her. He contends that the Petitioner despises him because she earns more than him. He prays that the marriage be dissolved as the Petitioner has another man in her life known as J O with whom she lives in an adulterous relationship.
7. I have considered the Petition, the Reply to Petition and Cross Petition as well as the testimony of both the Petitioner and the Respondent. The Petitioner met and married the Respondent at the Registrar's Office in Mombasa on 1.4.05. The marriage certificate serial number *[particulars withheld]* is sufficient proof of the fact of the marriage. Both the Petitioner and the Respondent testified in Court and each was keen on proving the other as the cause of the break down in the marriage.
8. 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"**
9. In her Petition and in her evidence the Petitioner cites the grounds of cruelty while the Respondent in his Reply to Petition accused the Petitioner of cruelty, desertion and adultery.
10. On the ground of cruelty, it is clear from the evidence that both parties were cruel to each other. Their conduct as set out above was such that caused both parties mental, emotional and psychological anguish. I am satisfied that this ground has been proved.
11. On the ground of adultery, the Respondent alleges that the Petitioner has been cohabiting with J O since the separation to date. The Petitioner's mere denial that she is in an adulterous relationship with J O is not convincing. She did not rebut the allegation by the Respondent that she is cohabiting with J. Indeed when the Respondent went to wait for her at her home after the incident at the Lounge, it was the said J with whom she came home at 5 am. I therefore find that the ground of adultery on the part of the Petitioner has been proved.
12. On the ground of desertion, the Petitioner states in her testimony that she left the matrimonial home on 15.8.11 and has not returned since. She stated that she left due to the cruelty she was subjected to by the Respondent. This amounts to constructive desertion. The law requires that

desertion be for a period of at least three years. It has been over four years since the Petitioner left the matrimonial home. Consequently I find that the ground of desertion has been proved.

13.It is clear from the foregoing that the marriage herein has irretrievably broken down. Neither of the parties is interested in the same. Accordingly, I pronounce a decree of divorce and order that the marriage solemnised at the Registrar's Office in Mombasa on 1.4.05 be and is hereby dissolved. Decree *nisi* to issue and the same to be made absolute within 1 month.

14.Each party shall bear its own costs.

**DATED, SIGNED and DELIVERED in MOMBASA THIS 26<sup>TH</sup> DAY OF JANUARY, 2016.**

**M. THANDE**

**JUDGE**

**In the presence of: -**

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

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

..... **Court Assistant**