



**REPUBLIC OF KENYA**

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

**DIVORCE CAUSE NO. 248 OF 2013**

**BETWEEN**

**M H N .....PETITIONER**

**AND**

**N S S.....RESPONDENT**

**JUDGEMENT**

1. On 29<sup>th</sup> October, 2010, the Petitioner, then a Spinster known as M H N was lawfully married to the Respondent N S M S then a bachelor and a certificate Serial No. ***[particulars withheld]*** issued to them in accordance with the **Marriage Act Cap 150 Laws of Kenya**. The marriage was celebrated at the Registrar's Office Nairobi. They have no issue of the marriage.
2. The Petition in this matter was filed in court on 26<sup>th</sup> November 2013. The Petitioner seeks dissolution of the marriage on grounds of cruelty, desertion, neglect and adultery as particularised therein.
3. The particulars of cruelty are said to have been directed at the Petitioner by the Respondent. The Petitioner avers that since the celebration of the marriage, the Respondent has completely refused to allow her to move in with him, or to consummate the marriage. That the Respondent is consistently engaged in drug abuse and on several occasions has threatened to visit personal violence on the Petitioner and embarrassed her in front of her family.
4. On desertion the Petitioner states that the Respondent, without any justifiable reason deserted her immediately after the celebration of the marriage and completely refused to allow the Petitioner to move in with him. That they have never cohabited since their marriage and the Respondent has denied the Petitioner the enjoyment of conjugal rights causing her to suffer psychologically. The Petitioner also states that the Respondent does not engage her in any conversation as would be reasonably expected of a couple in a marriage, and that he has never provided for the emotional and material needs of the Petitioner.
5. The particulars of adultery are that the Respondent has never made any attempt to consummate the marriage, despite repeated entreaties and pleas from the Petitioner. That he has also maintained a very secret life from the Petitioner. This therefore, leads the Petitioner to conclude that his emotional satisfaction and companionship are being catered for elsewhere.
6. The Petitioner confirms that this Petition has not been presented or prosecuted in collusion with the Respondent, nor has she connived or condoned the acts of cruelty or desertion complained of. She has also certified that there have been no previous proceedings filed regarding the marriage. She further states that efforts at reconciliation through family members and friends have borne no fruit.
7. On 22<sup>nd</sup> May, 2014 the Deputy Registrar certified that the matter was suitable to proceed for hearing as an undefended cause for one day in Nairobi. The Respondent had been served with the petition and notice to appear on 17<sup>th</sup> December 2013 but he did not appear nor did he file an answer to the Petition or a cross-Petition thereto. The Petitioner testified on 16<sup>th</sup> April 2015 and basically confirmed what she had set out in the Petition but abandon the grounds of adultery.

8. From the foregoing it is evident that the marriage celebrated between the parties herein on 29<sup>th</sup> October, 2010, was still born for lack of consummation and cohabitation. It is not denied that in the five years that the couple has been married they have never consummated their marriage nor cohabited. In the circumstance the court in the exercise of its inherent jurisdiction makes the following orders:

- a. That the marriage celebrated between the Petitioner and Respondent at the Registrar's office in Nairobi on 29<sup>th</sup> October 2010 is hereby annulled.
- b. That Decree nisi dissolving the said marriage is hereby issued to be made absolute thirty (30) days from the date of this judgment.
- c. There shall be no orders as to costs.

**SIGNED DATED and DELIVERED** in open court this **30<sup>th</sup> day of April 2015**.

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**L. A. ACHODE**

**JUDGE**