



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

**DIVORCE CAUSE NO. 15 OF 2011**

**BETWEEN**

**H H B.....PETITIONER**

**AND**

**M N B.....RESPONDENT**

**JUDGEMENT**

1. Marriage was celebrated between the parties herein on 25<sup>th</sup> March 1983 at the office of the Registrar in Backnang, Germany. A certificate of marriage serial number *[particulars withheld]* was duly issued to them in accordance with the relevant German law. The couple thereafter cohabited at various addresses in Germany, as husband and wife. They were blessed with issue – O M B, however the respondent brought into the marriage a child called T H M; the product of a previous relationship called T H M.
2. I noted from the proceedings that both parties were resident in Nairobi, Kenya, both at the time of the filing of the cause and at the hearing of the matter.
3. The petition in this matter was filed in court on 3rd February 2011. The petitioner seeks dissolution of the marriage on the grounds of adultery and cruelty. The particulars of adultery being that the respondent had had during the currency of the marriage adulterous liaisons with other men, that she frequently slept out of the matrimonial home in the company of other men, that she was seen on holiday with other men in Nairobi and in Germany and in particular with a man from Dusseldorf who took her on a five week holiday both in Germany and Italy, and that she openly admitted to adulterous liaisons during fits of anger.
4. The particulars on cruelty are that the respondent has not shown warmth and affection to the petitioner instead she has displayed open contempt towards him, that she has exposed the petitioner to public embarrassment and ridicule because of her open pursuit of her adulterous interests, that she subjected the petitioner to mental anguish by denying him companionship and subjecting him to periods of unease and uncertainty, that she undermined him and refused to acknowledge his contribution and efforts, she openly insulted him and displayed rudeness to him, she has completely abandoned her wifely duties at the matrimonial home because she leaves the home very early in the morning only to return late at night or spends the entire weekend out of the home leaving the petitioner alone at home to care for and look after the children, and she had taken into excessive drinking which made it difficult for her to discharge her duties as mother and wife. He pleads that in view of the said matrimonial offences the marriage between them has irretrievably broken down and that they now live separately.

5. The respondent was served with the divorce papers. She entered appearance on 24<sup>th</sup> February 2011 and filed an answer to the petition and cross-petition on 18<sup>th</sup> April 2011. In her answer, she denies the allegations levelled against her by the petitioner and asserts that it is the petitioner who is actually to blame for the state of affairs that the couple finds itself in.
6. She cross-petitions for dissolution of the marriage, maintenance and alimony. She finds her claim on cruelty. She complains that she was denied conjugal rights, denied communication for prolonged periods of time, the petitioner often stayed away from the matrimonial home for extended periods of time, he exhibited violence towards her, he harassed her by making numerous telephone calls to her while she was at work and by continuously sending messengers to her house with the intention of getting her to sign certain documents, and that he has failed to take care of his financial obligations to her. She accuses him of having an adulterous relationship with an unknown woman. To support her claim for maintenance she prays for monthly support by the petitioner at the rate of Kshs. 90, 000.00 to cater for house rent, car fuel, medical care and conservancy. She also prays for alimony at the monthly rate of Kshs. 50, 000.00.
7. To these allegations the petitioner replied vide his reply to the answer to petition and answer to cross-petition dated 28<sup>th</sup> June 2011 and filed in court on the same date. He denies the allegations, and answers some of the accusations made against him by the respondent.
8. The Deputy Registrar directed on 8<sup>th</sup> November 2012 that the matter proceeds a defended cause..
9. The matter was heard on 4<sup>th</sup> July 2014, 9<sup>th</sup> October 2014 and 4<sup>th</sup> December 2014. Both parties testified and gave vent to the allegations made in their respective pleadings.
10. The petitioner filed written submissions on 16<sup>th</sup> February 2015, dated 12<sup>th</sup> February 2015. There are no written submissions on record by the respondent.
11. From the material before me, it would appear to me that the marriage between the parties herein has irretrievably broken down. The parties have been living apart for quite some time now. It would also appear to me that there has been no collusion between the petitioner and the respondent in the bringing of these proceedings.
12. On maintenance and alimony, I note that the parties resolved the issues relating to matrimonial property in HCCC No. 60 of 2013 (OS), where both are party. The respondent got the bulk of the property from the consent recorded in that matter on 12<sup>th</sup> February 2015. Some of the assets that were given to her are income-generating, and therefore there is no necessity for her to receive alimony from the petitioner. The respondent can live comfortably on the income from the said assets.
13. I am disposed to make the following orders: -
  - a. That I hereby order dissolution of the marriage celebrated between the petitioner and respondent on 25<sup>th</sup> March 1983;
  - b. Decree *nisi* shall issue forthwith, to be made absolute after thirty (30) days;
  - c. That there will be no orders as to costs.

**DATED, SIGNED and DELIVERED at NAIROBI this 17<sup>th</sup> DAY OF April 2015.**

**W. MUSYOKA**

**JUDGE**

**In the presence of Mr. Mugumia advocate for the petitioner.**

**In the presence of Ms. Njogu advocate for the respondent.**