



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**DIVORCE CAUSE NO. 74 OF 2014**  
**H R C.....PETITIONER**  
**VERSUS**  
**R M W ..... RESPONDENT**

**JUDGMENT**

1. The petitioner and respondent got married on 3rd April 2003 at the District Commissioner's office in Maralal, Samburu District. After the said marriage the petitioner and respondent cohabited together as husband and wife in Samburu, Nyasa land Kitale and Nairobi. The said marriage was blessed with two issues namely;
  - i. L W M born on 18<sup>th</sup> July 2001 and
  - ii. P L N M born on 19<sup>th</sup> May 2003
2. That both the children attend *[particulars withheld]* International school and reside with the respondent in Imara Daima. She avers that during the 11 years of marriage the respondent was the bread winner paying the children's school fees and clothing before their separation in 2008 and that the respondent deserted their matrimonial home for over 5 years presiding this petition and he is said to be cohabiting with another woman in their Nyasa land matrimonial home with whom he has two children.
3. She seeks dissolution of her marriage to the respondent on grounds of desertion, cruelty and adultery which she particularized as follows that; The respondent deserted the matrimonial home since 2008 and has not resumed cohabitation since then; that since the celebration of the said marriage the respondent has treated the petitioner and the children of the marriage with cruelty has failed to look and tend to the petitioner and the children of the marriage is of ungoverned temper and has habitually used violent and abusive language to the petitioner; that the respondent since the celebration of the marriage was adulterous and is currently alleged to be married to another woman with whom they have 2 children.
4. She avers that after the desertion the petitioner filed a maintenance cause Case No. 263 of 2008 and the court ordered that he pays Kshs.23,000/- as fees for the children and cater to the children's medical needs when the same arises and also to deposit with the petitioner's account Kshs. 6,000/- every month with effect from April 2009 on the 5<sup>th</sup> of every month. The respondent has not complied with has no complied with the said order to-date.
5. The petitioner prays for an order dissolving the marriage between her and the respondent; that she be granted custody of the children and protection from any form of harassment, threats and

interference and he be condemned to pay costs of the petition.

6. The respondent despite being served with the notice to enter appearance failed to do so and the petitioner sought Registrar Certificate for the matter to proceed as undefended which was granted on 19/3/15.
7. The cause was heard on 28/5/2015. In her testimony she reiterated the averments in her petition. She also sought to adduce a medical report dated 17/11/06 to support her claims of abuse.
8. The petitioner's evidence was not challenged. The petitioner has raised various grounds; desertion, cruelty and adultery. The Marriage Act 2014 at Section 66 outlines the grounds for dissolution of a marriage, amongst them being cruelty, desertion and adultery. The petitioner given details of physical assault and adduced a medical report dated 17/11/06. I find that the marriage has irretrievably broken down and there is no possibility of reconciliation. From the petitioner's evidence am convinced that the respondent was cruel to her and had deserted her and the children of the marriage. This court therefore dissolves the marriage between the Petitioner and the Respondent celebrated on the 3rd April 2003. A decree nisi to issue forthwith and to be made absolute within 30 days. No orders as to cost. It is so ordered.

Dated, signed and delivered this 25<sup>th</sup> day of **June** 2015.

**R. E. OUGO**

**JUDGE**

In the presence of:

..... **For the Petitioner**

..... **For the Respondent**

**Charity Court Clerk**