



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

DIVORCE CAUSE NO. 2 OF 2011

**K N M.....PETITIONER**

**VERSUS**

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

JUDGMENT

1. The Petitioner married the respondent on the **28<sup>th</sup> December, 2005** at the **Registrar's Office Nairobi**. A certificate of marriage was duly issued [*particulars withheld*]. They cohabited at **Nairobi Karen, Athi River** and *Machakos* respectively until **2011**. They were blessed with two (2) issues of the marriage, **K.A.N.M.** and **C.A.M.**
2. The Petitioner now seeks dissolution of their marriage on grounds of cruelty and desertion. She also seeks custody of the two (2) children of the marriage, maintenance of the children and costs of the petition.
3. At the hearing the petitioner stated that the Respondent was violent and abusive and he deserted their matrimonial home in the **year 2010** such that he did not even see their second child. He disposed of their stock at the wines and spirit shop in Machakos, an investment carried out by the Petitioner. An effort by the Petitioner to have the matter resolved by elders was fruitless.
4. The Respondent having been served with a Notice to Enter Appearance did file a notice to that effect. He however, failed to file an answer to the Petition. The same therefore stood undefended. He was notified of the hearing but neglected and/or refused to act.
5. Having heard the Petitioner, I am satisfied that the marriage between the Petitioner and the Respondent has broken down irretrievably. The youngest child who is now aged **three (3) years** having not been seen by the respondent since birth is proof of neglect and lack of interest on the part of the respondent in his family. Evidence of cruelty is also not controverted.
6. In the premises;
  - i. I do grant divorce sought. The marriage between the petitioner and the Respondent celebrated on the **28<sup>th</sup> December, 2005** be and is hereby dissolved. A *decree nisi* shall issue forthwith to be made **absolute** after the statutory period of **six months**.
  7. One of the reliefs sought by the petitioner is maintenance of the children by the respondent. However, at the hearing the petitioner did not state how she wished to have the children maintained. However, the law would require both parents to be responsible for maintenance of the children of the marriage. This is an obligation they cannot abdicate.
    - ii) Custody of the two (2) children of the marriage be and is by granted to the petitioner
    - iii) The children of the marriage shall be entitled to maintenance by both the Petitioner and Respondent
    - iv) The petitioner shall have costs.

**DATED, DELIVERED and SIGNED this 15<sup>th</sup> day of JANUARY, 2014.**

**L.N. MUTENDE**

**JUDGE**