



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MOMBASA**  
**DIVORCE CAUSE NO. 68 OF 2013**

**K D M.....PETITIONER**

**VERSUS**

**P M S C.....RESPONDENT**

**JUDGMENT**

The petitioner **K D M** filed her petition dated 30<sup>th</sup> September, 2013 seeking the dissolution of her marriage to the respondent **P M S C**. The petitioner also made a prayer for custody of the two children of the marriage as well as orders for the payment of maintenance. Despite having been properly served with the petition the respondent failed to and/or declined to file any reply to the same. The matter proceeded as an undefended cause.

The petitioner in her evidence told the court that she got married to the respondent on the 14<sup>th</sup> July, 1999. She produces a copy of her marriage certificate serial number [Particulars withheld] as proof of this fact. After the marriage the couple resided as man and wife in old town Mombasa. They bore two children together being

- K P C born in 2000
- S P C born in 2002

The petitioner told the court that the marriage was problematic because the respondent was an irresponsible husband who spent most of his time and money drinking and chewing khat. He would demand that she hand over the little money she made as a physiotherapist and would beat her if she refused. Eventually the respondent abandoned the family in the matrimonial home. Faced with no option the petitioner moved to stay with her parents who are helping her to raise her children. It is for these reasons that she now seeks a divorce.

The petitioner's evidence remained unchallenged as the respondent did not bother to respond to the petition. From her evidence it is clear that the petitioner had to endure an extremely trying marriage. The respondent's action of spending all his earnings on alcohol and khat leaving the petitioner to cater for the family's needs from her meager earnings amounted to cruelty. His action in moving out of the matrimonial home constituted desertion. Clearly the respondent had no interest in sustaining his marriage with the petitioner. All in all I am satisfied that there exist sufficient grounds to allow this petition. The prayer for divorce is hereby granted.

With regard to the two children they are currently in the custody of the petitioner. Her prayers for custody and maintenance ought to be made before the Children Court in the first instance. However, I do direct that pending any other orders the status quo do remain. This being a family matter I make no orders with respect to costs. Decree nisi to issue to be made absolute within three (3) months of today's date.

**Dated and delivered in Mombasa this 31<sup>st</sup> day of March, 2014.**

**M. ODERO**

**JUDGE**

In the presence of:

Mr. Nangoye for Petitioner