



**REPUBLIC OF KENYA**

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

**DIVORCE CAUSE NO. 10 OF 2012**

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

**VERSUS**

**N W G.....1<sup>ST</sup> RESPONDENT**

**J G P .....CO- RESPONDENT**

**J U D G M E N T**

The Petitioner and the Respondent were on 4<sup>th</sup> June 1990 married at the Registrar’s Office in Nairobi. The marriage was celebrated under the **Marriage Act**. After the celebration of the said marriage, the Petitioner and the Respondent cohabited together as husband and wife in Nairobi. The marriage was blessed with three (3) issues. According to the Petitioner, the Respondent had since the celebration of the said marriage treated him with cruelty. He sets out the particulars of cruelty in his petition for divorce. In summary, he accused the Respondent of subjecting him to mental anguish by leaving the matrimonial home for extended periods of time without keeping him informed.

He averred that the Respondent had been guilty of willful neglect of his welfare and that of the children of the marriage. He further accused the Respondent of committing adultery with one J G P. The Petitioner avers that the Respondent had even purported to contract a marriage with the said J G P with whom she now has a child with. It is on account of the above matrimonial offences that the Petitioner is of the view that his marriage to the Respondent had irretrievably broken down with no possibility of salvage. He therefore urges the court to grant his petition for divorce, direct that the Petitioner maintains the children and also award him costs of the petition.

The Respondent was duly served with a copy of the petition for divorce together with notice requiring her to enter appearance. She however did not enter appearance. Neither did she file papers in opposition to the petition. The Deputy Registrar of this court issued a certificate certifying that the proceedings herein continue as an undefended cause. During the hearing of the cause, this court heard oral evidence adduced by the Petitioner. He essentially reiterated the contents of his petition for divorce. He testified that the Respondent had committed adultery during the subsistence of the marriage. He told the court that she deserted the matrimonial home in 2002 and they have been separated since. According to the Petitioner, the marriage had irretrievably broken down with no possibility of salvage. The Petitioner told the court that any effort at reconciliation had not borne any fruit and therefore the only solution is for this court to dissolve the marriage.

Having carefully evaluated the evidence adduced by the Petitioner, it was clear to this court that the matrimonial offence of cruelty had been established. The Respondent deserted the matrimonial home since 2002. She has neglected her responsibilities as a mother and wife to the Petitioner and the children of the marriage. The Petitioner further proved the matrimonial offence of adultery. He established that the Respondent was cohabiting with another man during the subsistence of their marriage. He further established that the Respondent now has a child born of the said extra-marital relationship. The court formed the opinion that indeed the marriage between the Petitioner and the Respondent had irretrievably broken down. All attempts at reconciliation had failed. The Petitioner and the Respondent have been separated for more than twelve (12) years. For the above reasons, this court will grant the petition for divorce.

In premises therefore, the marriage celebrated on 4<sup>th</sup> July 1990 at the Registrar's Office in Nairobi between the Petitioner and the Respondent is hereby dissolved. Decree nisi dissolving the said marriage is hereby issued. The decree nisi shall be made absolute thirty (30) days from the date of this judgment. The Petitioner shall have the custody of the children of the marriage. As regards the issue of maintenance of the children, the same shall be canvassed at the Children's Court. There shall be no orders as to costs. It is so ordered.

**DATED AT NAIROBI THIS 28<sup>TH</sup> DAY OF MARCH, 2014**

**L. KIMARU**

**JUDGE**