



**REPUBLIC OF KENYA**

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

**DIVORCE CAUSE NO. 209 OF 2012**

**S K M.....,PETITIONER**

**VERSUS**

**K K M.....RESPONDENT**

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

The Petitioner and the Respondent were married on 28<sup>th</sup> August 2011 under the Hindu traditional marriage rites at Hareshchandra Surendraprasd Shukal in Nairobi. After the celebration of the said marriage, the Petitioner and the Respondent cohabited together as husband and wife in the Westlands area within the City of Nairobi. The marriage has not been blessed with any issue. According to the Petitioner, the Petitioner and the Respondent vide a mutual agreement signed on 13<sup>th</sup> July 2012 agreed to permanently separate. They further agreed that there would be no claims against each other arising from the said marriage. A copy of the said agreement was annexed to the petition for divorce. In the premises therefore, the Petitioner prays that the marriage be nullified.

The Respondent was duly served with the petition for divorce. 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 divorce cause. During the hearing of the petition, the Respondent was served with the hearing notice to attend court. She failed to attend court. This court heard oral evidence adduced by the Petitioner. In essence, the Petitioner reiterated the contents of his petition for divorce. He told the court that the Respondent had withheld from him his conjugal rights without any reason. She was further not interested in the marriage. The Petitioner stated that because of the Respondent's behaviour, he left the matrimonial home on 13<sup>th</sup> July 2012. Since then, he had been separated from the Respondent. The Petitioner testified that all efforts to reconcile them had failed. He therefore sought to be divorced from the Respondent.

This court has carefully considered the ground put forward by the Petitioner in support of his petition for divorce on the ground of nullity. This court holds that the Petitioner did indeed prove to the required standard of proof on a balance of probabilities that indeed his marriage to the Respondent should be declared a nullity and be dissolved by reason of non- consummation of the marriage. From the evidence adduced, it was clear that the Respondent had no intention of consummating the marriage. In the premises therefore, the marriage celebrated between the Petitioner and the Respondent on 28<sup>th</sup> August 2011 at Hareshchandra Surendraprasd Shukal in Nairobi is hereby declared a nullity and is hence dissolved. Decree nisi dissolving the said marriage is hereby issued. The decree nisi shall be made absolute within thirty (30) days of the date of delivery of this judgment. There shall be no orders as to costs.

**DATED AT NAIROBI THIS 20<sup>TH</sup> DAY OF MARCH, 2014**

**L. KIMARU**

**JUDGE**