



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

**DIVORCE CAUSE NO. 44 OF 2013**

**BETWEEN**

**E M M.....PETITIONER**

**AND**

**M P L.....RESPONDENT**

**JUDGEMENT**

1. Marriage was celebrated between the parties herein on 1<sup>st</sup> May 1999 at Amsterdam, the Netherlands. An extract from the marriage registration number [*particulars withheld*] is attached to the petition. The couple thereafter cohabited at Karen in Nairobi, Kenya, as husband and wife. The couple was blessed with two issues – O G H L and F H M L, born in 2000 and 2001, respectively.
2. The petition in this matter was filed in court on 25<sup>th</sup> February 2013. The petitioner accuses the respondent of adultery. The particulars of adultery are that the respondent had been prior to the presentation of the petition in a sexual liaison with a C G for the period between 2007 and 2012. As a consequence of the adultery, the petitioner pleads that she left the matrimonial home in April 2011.
3. The petition was served on the respondent on 28<sup>th</sup> February 2013, there is an affidavit of service on record sworn by V Wangui Shaw, Advocate, on 23<sup>rd</sup> March 2013 and an acknowledgement of service signed by the respondent and dated 28<sup>th</sup> February 2013. The respondent did not however enter appearance nor file an answer to the petition. On 11<sup>th</sup> April 2013 the Deputy Registrar certified that the matter proceeds for hearing as an undefended cause. As there is no reply to the petition, the petitioner's allegations, as made in the petition, remain uncontroverted.
4. The petitioner testified on 10<sup>th</sup> October 2013 and gave vent to the allegations made in her petition. She placed before the court a letter dated March 2011 allegedly signed by the respondent in which he expressly admits the sexual affair alleged between him and C G. No counter evidence was given by the respondent, and therefore the petitioner's story was not controverted.
5. It would appear to me that the marriage between the parties herein has irretrievably broken down. It would also appear to me that there has been no collusion between the petitioner and the respondent in the bringing of these proceedings. There is also no evidence that the petitioner has condoned the adultery.
6. The orders that I am disposed to make are as follows:-

- a. That I hereby dissolve the marriage celebrated between the petitioner and respondent on 1<sup>st</sup> May 1999;
- b. That I grant joint custody of the children of the marriage to both parties, but the petitioner shall retain custody of the said children;
- c. That any further orders touching on access to and maintenance of the children shall be sought from the Children's Court
- d. Decree *nisi* shall issue forthwith, and may be made absolute after thirty (30) days.
- e. There will be no orders as to costs.

**DATED, SIGNED and DELIVERED at NAIROBI this 25<sup>th</sup> DAY OF April, 2014.**

**W MUSYOKA**

**JUDGE**

**In the presence of .....advocate for the petitioner.**

**In the presence of .....advocate for the respondent.**