



**REPUBLIC OF KENYA**

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

**DIVORCE CAUSE NO. 142 OF 2009**

**BETWEEN**

**J M M.....PETITIONER**

**AND**

**G M M.....RESPONDENT**

**JUDGEMENT**

1. Marriage was celebrated between the parties herein on 25<sup>th</sup> February 1994 at the Registrar's Office, Nairobi. A certificate of marriage was issued to them in accordance with the Marriage Act. The couple thereafter cohabited at Limuru, Kenya, as husband and wife. The couple was blessed with four (4) issues, although one has since passed away.
2. The petition in this matter was filed in court on 25<sup>th</sup> September 2009. The petitioner founds his petition on desertion and cruelty. He alleges that the respondent left the matrimonial home leaving the children behind with the respondent. It is not indicated when the alleged desertion occurred. The respondent is accused of abusing the petitioner in the presence of the children, leaving the matrimonial home without indicating where she was going, stopping the petitioner from communicating with his family members or even visiting them, neglecting her duties as a wife, abusing the petitioner in public and the presence of his workmates, being rude to the respondent's parents, denying the petitioner his conjugal rights and deserting the matrimonial home.
3. The petition was served on the respondent on 23<sup>rd</sup> October 2009 and there is an affidavit of service to that effect, but she did not file answer to the divorce petition. On 13<sup>th</sup> October 2011 the Deputy Registrar certified that the matter proceeds for hearing as an undefended cause. As there is no reply, the petitioner's allegations, as made in the petition, remain uncontroverted.
4. The petitioner testified on 19<sup>th</sup> April 2012 before Njagi J and gave vent to the allegations made in her petition. He testified that the respondent deserted the matrimonial home on 23<sup>rd</sup> February 2008 and never returned. She is said to have emigrated to the United States of America. 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. Having taken into account the evidence before me I hereby make the following orders-
  - a. That the marriage celebrated between the petitioner and respondent on 25<sup>th</sup> February 1994 is hereby dissolved. Decree *nisi* shall issue forthwith and shall be made absolute after thirty (30) days;
  - b. That custody of the children of the marriage is hereby granted to the petitioner; and
  - c. 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.**