



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MOMBASA**

**DIVORCE CAUSE NO. 62 OF 2013**

**C W I.....PETITIONER**

**VERSUS**

**E O M.....RESPONDENT**

**JUDGMENT**

The petitioner **C W I** has filed this petition seeking the dissolution of her marriage to the respondent **E O M**. The respondent who was properly served with both the petition and a summons to enter appearance did not bother to file any papers in reply to the petition. The matter therefore proceeded as an undefended cause.

The petitioner testified before this court on the 17<sup>th</sup> March, 2014. She told the court that she met and married the respondent on 24<sup>th</sup> August, 2008 at the Registrar's office in Nairobi. A copy of their marriage certificate serial number [Particulars withheld] provides proof of the fact of marriage. After the marriage the couple initially lived in [Particulars withheld] Estate in Nairobi. In the year 2009 they moved to Mombasa where the respondent was working as a Naval Officer whilst the petitioner conducted a supplies business. Their union was bless with one child a son named 'D I' who was born in the year 2007. His birth certificate serial number [Particulars withheld] is annexed to the petition. The petitioner goes on to narrate how after the couple had had a disagreement the respondent's parents and family chased her out of the matrimonial home at the Mtongwe Naval Base. She testifies that the respondent was an abusive husband who assaulted her on several occasions. He was fond of alcohol and engaged in adulterous affairs. She now seeks a divorce.

As stated earlier this petition was not opposed. As such the evidence of the petitioner remains uncontroverted. The Matrimonial Causes Act Cap 152 Laws of Kenya provides in section 8(1) the grounds upon which a marriage may be dissolved. The petitioner has stated that the respondent did physically assault her on several occasions. She has produced a bundle of medical reports from the Nairobi Equator Hospital all of which related to treatment she received after the assaults. In all the reports the medical history indicates that the petitioner was assaulted by her husband. Included in the bundle are two P3 forms one dated 20<sup>th</sup> April, 2009 and another dated 9<sup>th</sup> May, 2011. These all relate to reports which the petitioner made to Nyayo Stadium police post regarding assaults by her husband. In each case she was examined by the police surgeon and was found to have sustained injuries. The presence of these reports persuades me that these assaults actually did occur and that the petitioner took the step of reporting the same to the police. In each case she named her husband as her attacker. To subject one's wife to constant physical attacks and battering certainly amounts to cruelty. I am satisfied that the ground of cruelty has been sufficiently proved.

The petitioner has alleged that the respondent committed adultery during the marriage. She states that he is currently living with another woman known as S A. This has not been denied. To cohabit with another woman during the subsistence of one's marriage is clear evidence of adultery. It is clear proof that the respondent does not value his spouse. The petitioner told the court that the couple has been counseled by pastors and professionals in an attempt to save their troubled marriage but this has been in vain.

Based on the foregoing and in view of the fact that the respondent is now living with another woman it is

clear this marriage has broken down. The grounds of cruelty and adultery have both been proved. I therefore allow this petition for divorce. Decree nisi to issue to be made absolute within three (3) months of today's date. No order on costs.

**Dated and delivered in Mombasa this 14<sup>th</sup> day of April, 2014.**

**M. ODERO**

**JUDGE**

In the presence of:

Petitioner in person

No appearance by Respondent

Court Clerk Mutisya