



**REPUBLIC OF KENYA**

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

**DIVORCE CAUSE NO. 241 OF 2013**

**M I M.....PETITIONER**

**VERSUS**

**F M M.....RESPONDENT**

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

The Petitioner and the Respondent were married in 1985 under customary law. They formalized their marriage on 15<sup>th</sup> March 1996 at the Registrar’s Office in Nairobi. The marriage was celebrated under the **Marriage Act**. The marriage was blessed with four (4) issues, three (3) of who are now adults. After the celebration of the said marriage, the Petitioner and the Respondent cohabited together as husband and wife in Nairobi. According to the Petitioner, since the celebration of the said marriage the Respondent has treated her with cruelty. In particular, she states that the Respondent had on several occasions been violent towards her. She stated that the Respondent had neglected his duty to provide for and maintain the family. She further states that the Respondent had humiliated and embarrassed her in the presence of her relatives. She accused the Respondent of drunkenness. She further averred that the Respondent had committed adulterous affairs with various women that she particularized in the petition for divorce. The Petitioner averred that since 2007, the Respondent had deserted the matrimonial home and lived elsewhere in Nairobi. It was for these reasons that the Petitioner urged the court to dissolve the marriage and make a further order to the effect that she has custody and care of the minor child of the marriage.

When the Respondent was served, he duly entered appearance and filed an answer to the petition. He also cross-petitioned for divorce. He denied the allegations made in the petition for divorce. He averred that it was the Petitioner who had been cruel to him. In particular, he complained that the Petitioner had on several occasions physically assaulted him during the subsistence of the marriage. He alleged that the Respondent had denied him his conjugal rights, was ill tempered and exhibited violent tendencies towards him thus causing him to suffer mental anguish. He explained that he was forced to move out of their matrimonial home due to the Respondent's cruelty. He cross-petitioned to be divorced from the Petitioner on the grounds of cruelty. He set out the particulars of cruelty in his cross-petition. It is for these reasons that he asks the court to dismiss the petition for divorce and grant him his cross-petition for divorce.

During the hearing of the petition for divorce, this court heard evidence adduced by the petitioner in the presence of counsel for the Respondent. She basically reiterated the contents of her petition for divorce. The Respondent did not offer any evidence. This court read the pleadings filed by the parties to this petition for divorce. The court has also considered the evidence that was adduced by the Petitioner in support of her petition for divorce. From the evidence adduced, it was clear that the marriage between the Petitioner and the Respondent has indeed irretrievably broken down with no possibility of salvage. The accusations and counter accusations of cruelty and infidelity are sufficient proof that the marital relationship between the Petitioner and the Respondent has deteriorated to such an extent that it cannot be salvaged. The Petitioner and the Respondent are no longer living together. They have been separated for nearly seven (7) years. This court formed the view that the matrimonial offence of desertion has been proved to the required standard of proof on a balance of probabilities. This court will grant the petition for divorce.

In the premises therefore, the marriage formalized on 15<sup>th</sup> March 1996 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) from the date of this

judgment. There shall be no orders as to costs. It is so ordered.

**DATED AT NAIROBI THIS 4<sup>TH</sup> DAY OF APRIL, 2014**

**L. KIMARU**

**JUDGE**