



**REPUBLIC OF KENYA**

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

**DIVORCE CAUSE NO. 92 OF 2011**

**BETWEEN**

**E J N.....PETITIONER**

**AND**

**P N N..... RESPONDENT**

**JUDGEMENT**

1. Marriage was celebrated between the parties herein on 23<sup>rd</sup> November 1980 at the office of the District Commissioner for Nandi District, under the Marriage Act, Cap. 150, Laws of Kenya. The marriage certificate issued serial number *[particulars withheld]* is attached to the petition.

2. The couple thereafter lived at various places in as husband and wife. Some of the places where they cohabited included Kapsabet, Nakuru and Nairobi. The couple was blessed with three children – D K, D N and K M, now all adults.

3. The petition in this matter was filed in court on 31<sup>st</sup> May 2011. The petitioner accuses the respondent of cruelty and adultery. The particulars of cruelty are that the respondent disrespects her and has failed to adapt to the lifestyle of a married man, he brings women to the matrimonial home, he regularly spends nights out of the matrimonial home, he can even disappear for a whole weekend leaving no provision for the family, he is given to abusive language, chases the petitioner out of the matrimonial home, he is a person of violent temper and is physically abusive, he drove the petitioner out of the matrimonial bedroom, among others.

4. On adultery, I do note that the alleged co-adulterer with the respondent has not been brought into these proceedings. There are however allegations that that the respondent is generally an adulterous man. He is friendly to women and he frequently takes them to the matrimonial home. He sleeps out of the matrimonial home frequently and without explanation, and has had affairs with several women who are named in the petition but not made respondents. He is also said to have had child with several named women.

5. The petition was served on the respondent, who entered appearance and filed an answer to the petition and a cross-petition. She denies the allegations made in the petition. He argues that for most times the couple did not live together as they worked in different towns. In his cross-petition he accuses the petitioner of desertion and cruelty. She is said to have deserted the matrimonial home in September 1998 and left for the United States of America where she stayed until April 2011 when she came back. She is accused of being cruel abusive and disrespectful to the respondent. She is said to be a compulsive abuser of alcohol who drinks herself to a stupor to the detriment of the respondent and the children.

6. The registrar on 22<sup>nd</sup> September 2011 cleared the matter to proceed for hearing as a defended cause. The matter came for hearing on 25<sup>th</sup> July 2013. Both parties testified and gave vent to the allegations made in their respective pleadings. From the material before me, by way of pleadings and the oral evidence recorded at the trial, it is clear 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 cruelty proved in this case. Both sides appear to me to have contributed to the

breakup of the marriage. The petitioner by deserting the matrimonial home from 1998 to 2011, when she came back ostensibly to file and prosecute this petition, and the respondent by his cruel conduct.

7. The orders that I am disposed to make are as follows:-

- a. I hereby dissolve the marriage celebrated between the petitioner and respondent on 23<sup>rd</sup> November 1980;
- b. Decree *nisi* shall issue forthwith, and may be made absolute after thirty (30) days;
- c. There will be no orders as to costs.

**SIGNED DATED and DELIVERED in open court this 30<sup>th</sup> day of May 2014.**

**W. MUSYOKA**

**JUDGE**

**In the presence of Mr. Saini for Mrs. Sawe advocate for the petitioner**