



**REPUBLIC OF KENYA**

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

**DIVORCE CAUSE NO. 193 OF 2011**

**BETWEEN**

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

**AND**

**R V K A..... RESPONDENT**

**JUDGEMENT**

1. Marriage was celebrated between the parties herein on 1<sup>st</sup> August 2003 at the office of the Registrar of Marriages, Mombasa, under the Marriage Act, Cap. 150, Laws of Kenya. The marriage certificate issued serial number *[particulars withheld]* is attached to the petition. The couple did not live as husband and wife after the celebration on the marriage. There are no issues of the marriage.
2. The petition in this matter was filed in court on 20<sup>th</sup> December 2011, and was amended by an order of this court made on 11<sup>th</sup> April 2013.. The petitioner avers that they have never lived together has husband and wife after the celebration of the marriage in 2003.
3. The petition was served on the respondent and she entered appearance and filed an answer to the petition and a cross-petition. She denied the contents of the petition and alleged that there was cohabitation after the parties moved to the United States of America, and continued to live together for the next four years before there was a fallout. She avers that she had also filed a divorce cause in the United States of America seeking dissolution of her marriage to the petitioner. She contends that this cause was filed to frustrate the case in the United States. The cross-petition accuses that petitioner of cruelty, with particulars to support her grounds.
4. The registrar cleared the matter 13<sup>th</sup> October 2011 to proceed for hearing as a defended cause.
5. The matter came for hearing on 25<sup>th</sup> November 2013, when the petitioner testified and gave vent to the allegations made in his pleadings. He stated that the parties never lived together not even for one night.
6. After the oral evidence was taken counsel for the respondent asked for time to call the respondent to testify on her part. This was not to be. On 27<sup>th</sup> March 2014 the court ordered the respondent's case closed, and proceeded to fix the matter for judgement. The petitioner's oral evidence was consequently not controverted, and the respondent did not breathe life to her allegations in the

pleadings.

7. From the material before me, by way of pleadings and the oral evidence recorded at the trial, it is clear to me that there never was a marriage between the parties as after the ceremony at the office of the Registrar of Marriage on 1<sup>st</sup> August 2003, the parties never lived together and therefore did not get the opportunity to consummate it.
8. The orders that I am disposed to make in the circumstances are that:-
  - a. I hereby nillify the marriage celebrated between the petitioner and respondent on 1<sup>st</sup> August 2003;
  - 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. Odiya for Mrs. Thongori advocate for the petitioner.**