



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

**DIVORCE CAUSE NO. 23 OF 2008**

**A M.....PETITIONER**

**VERSUS**

**R D H.....RESPONDENT**

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

The Petitioner and the Respondent were married on 25<sup>th</sup> June 2004 at the Registrar's Office in Mombasa. The marriage was celebrated under the **Marriage Act**. After the celebration of the said marriage, the Petitioner and the Respondent cohabited together as husband and wife in Nairobi. The marriage has been blessed with two (2) issues, R N H born on 4th October 2003 and C M H born on 24th October 2005. The Petitioner avers that after the celebration of the said marriage, she discovered that the Respondent was still married to one C F H. It was the Petitioner's case that the Respondent, at the time he purported to have entered into the marriage with her, lacked legal capacity to enter into such marriage. In the premises therefore the Petitioner urged the court to nullify the marriage that was entered between herself and the Respondent as the same was null and void. The Petitioner further urged the court to grant her custody and control of the children of the marriage.

When the Respondent was served, he duly entered appearance and filed an answer to the petition. He also filed a cross-petition. In the answer to the petition, the Respondent averred that he had capacity to contract a marriage with the Respondent since he was legally separated from the said C F H. In his cross-petition for divorce, the Respondent accused the Petitioner of deserting their matrimonial home. According to the Respondent, the Petitioner had relocated to Australia together with the issues of the marriage. The Respondent averred that since March 2008 when the Petitioner left the matrimonial home, she had not returned to the said matrimonial home. It is for the above reason that the Respondent asks the court to grant his petition for divorce.

During the hearing of the petition, it was only the Respondent who was present in court. He reiterated the contents of his cross-petition for divorce. He told the court that he and C F H were divorced in 2003 prior to him contracting his marriage with the Petitioner. He testified that he has been separated from the Petitioner since February 2008. The evidence adduced by the Respondent was uncontroverted. This court has carefully considered the facts of this case. The Petitioner and the Respondent have been separated for more than six (6) years. The Petitioner is no longer a resident of this country. The Respondent proved the matrimonial offence of desertion to the required standard of proof on a balance of probabilities.

In the premises therefore, the marriage celebrated between the Petitioner and the Respondent on 25<sup>th</sup> June 2004 at the Registrar's Office in Mombasa 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.

**DATED AT NAIROBI THIS 26<sup>TH</sup> DAY OF JUNE, 2014**

**L. KIMARU**

**JUDGE**