

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

DIVORCE CAUSE NO. 17 OF 2013

O O.....PETITIONER

VERSUS

W A O.....RESPONDENT

JUDGMENT

The petitioner **O O** filed in court this petition dated 19th March, 2013 seeking the dissolution of his marriage to the respondent. The respondent **W A O** was duly served with both the petition and summons to enter appearance. She failed to enter appearance and failed to file any reply to the petition. The matter therefore proceeded as an undefended cause.

The petitioner testified before the court on 31st March, 2014. He told the court that he and the respondent got married on 23rd December, 2004 at the Registrar's Office in Mombasa. The copy of their marriage certificate serial number *[Particulars withheld]* **Pexb 1** provides proof of the marriage. Their union was blessed with one child a son **M A O** born on 24th June, 2002. The said child is now about 13 years old. Following their marriage the couple set up home as man and wife in Mombasa. The petitioner describes their union as '*short but stormy*'. He states that the respondent was aggressive and often fought with him even in his office. He claims that on one occasion the respondent hit him on the back of the head with a bottle which assault he reported at Port Police station. The petitioner further claims that the respondent practiced witchcraft and she placed clothes, wrappings and pieces of paper bearing the names of his family members in their bed-room. The petitioner's mother advised him to burn those items. The respondent denied him conjugal rights and sexual relations between them eventually ceased. In December, 2005 the respondent took all the household items and ran away leaving her son behind. The couple have never cohabited since that time.

As stated earlier the respondent was personally served with the petition but opted not to make any reply. I have no doubt that she was fully aware of these proceedings. The evidence of the petitioner remains unchallenged and/or uncontroverted. I have no reason to doubt what he has stated. The actions of the respondent do amount to cruelty. Her action in abandoning the matrimonial home and remaining away since December, 2005 amounts to willful desertion. The couple have not lived together for the past 8 ½ years. The marriage has clearly broken down. I am satisfied that the ground of desertion and cruelty has been proved. The respondent has not only abandoned her husband but has abandoned her son as well. I grant the orders for divorce as prayed. 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 17th day of June, 2014.

M. ODERO

JUDGE

In the presence of:

Mr. Mbuya for Petitioner

Court Clerk Mutisya