



**REPUBLIC OF KENYA**

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

**DIVORCE CAUSE NO. 54 OF 2014**

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

**VERSUS**

**R C S .....RESPONDENT**

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

The Petitioner and the Respondent were married on 20<sup>th</sup> November 2004 under the **Marriage Act**. The marriage was celebrated at St. Mark's Church, Westlands in Nairobi. After the celebration of the said marriage, the Petitioner and the Respondent cohabited together as husband at various estates within the city of Nairobi. The marriage has been blessed with two children, A H J born on 12th August 2005 and A R J born on 21st August 2007. According to the Petitioner, the Respondent has since the celebration of the marriage treated him with cruelty. He further accused the Respondent of committing the matrimonial offences of adultery and desertion. In the particulars set out in the petition for divorce, the Petitioner accused the Respondent of failing to undertake her wifely duties. He complained that the Respondent had been cold and indifferent towards him and had neglected him and the children of the marriage. He averred that the Respondent was irresponsible, difficult, irrational and had shown him utter contempt and lack of commitment towards her matrimonial obligations. He also accused the Respondent of engaging in extra marital affairs during the subsistence of their marriage and in particular with one D H. He also states that the Respondent deserted their matrimonial home in Nairobi in February 2013 and had relocated to Australia where she is staying with the said D H. Since then, the Petitioner and the Respondent have been separated. He averred that the Respondent left the matrimonial home leaving behind the custody of the issues of the marriage with the Petitioner. It is on account of the above matrimonial offences that the Petitioner is of the view that his marriage to the Respondent had irretrievably broken down. He therefore urges the court to dissolve the marriage.

The Respondent was served with the summons to enter appearance together with a copy of the petition for divorce. She entered appearance. However, she did not file any papers in opposition to the petition for divorce. The deputy Registrar of this court issued a certificate certifying this cause as suitable to be heard as an undefended divorce cause. During the hearing of the petition, this court heard oral evidence adduced by the Petitioner. He essentially reiterated the contents of his petition for divorce. He told the court that the Respondent had told him that she was not happy in the marriage before she relocated to Australia. He testified that the Respondent was now living with the said D H in an adulterous relationship. The Petitioner stated that the Respondent had even purported to be engaged to the said D H. He told the court that due to the instances of cruelty, adultery and desertion, his marriage to the Respondent had irretrievably broken down and therefore should be dissolved. It was for the above reasons that the Petitioner urged this court to grant his petition for divorce.

This court has carefully considered the said grounds of divorce. It was clear that the marriage between the Petitioner and the Respondent had indeed irretrievably broken down. The evidence adduced by the Petitioner was uncontroverted. Further, the fact that the Respondent deserted the matrimonial home and has relocated to Australia is sufficient proof that she is no longer interested in the marriage. This court therefore holds that the Petitioner proved to the required standard of proof on a balance of probabilities that indeed he is entitled to the order for divorce as sought in his petition for divorce.

In the premises therefore, the marriage celebrated between the Petitioner and the Respondent on 20<sup>th</sup> November 2004 at St. Mark's Church, Westlands in Nairobi 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 31<sup>ST</sup> DAY OF JULY, 2014**

**L. KIMARU**

**JUDGE**