

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

DIVORCE CAUSE NO. 12 OF 2014

S N P.....PETITIONER

VERSUS

A K P.....RESPONDENT

JUDGMENT

The petitioner **S N P** has filed this petition dated 18th February, 2014 seeking the dissolution of her marriage to the respondent **A K P**. The respondent was duly served with both the petition as well as a summons to enter appearance. He failed to respond in any way to the petition. The matter therefore proceeded as an undefended cause.

The petitioner testified before the court on 23rd June, 2014. She told the court that she and the respondent got married on 15th May, 2011 at the Hindu Community Hall in Mombasa. The copy of marriage certificate serial number xxxx provides sufficient proof of the marriage. After the marriage the couple went to live in Nairobi as man and wife. However, according to the petitioner the respondent totally refused to consummate their union. He was cruel and abusive to the petitioner calling her '*good for nothing*'. The petitioner suggested that they seek medical attention but the respondent declined. Eventually the petitioner returned to her parents' home. She states that since December, 2011 they have lived apart. She avers that the marriage has irretrievably broken down and seeks a divorce.

As stated earlier the respondent filed no response to this petition. The evidence of the petitioner remains uncontroverted. She has told the court that their marriage was never consummated due to the respondent refusal to engage in relations with her. I have no reason to doubt the veracity of the petitioner. The purpose of any marriage is companionship which includes sexual intimacy. The respondent's adamant refusal to consummate the union, and his abuse of the petitioner all amount to cruelty. Section 66(2) of the Marriage Act, 2014 provides the grounds upon which a civil marriage may be dissolved. These grounds include '*cruelty by one spouse directed to the other*'. This is exactly the situation here. By his actions the respondent effectively drove the petitioner away. I am satisfied that this ground of cruelty has been proved.

Section 66(b) (d) provides that where spouses have lived apart whether voluntarily or by a decree of the court for a period of at least two (2) years, the marriage is deemed to have broken down irretrievably. In this case the couple have lived separately since December, 2011 a period of about 2½ years. It is clear the marriage has irretrievably broken down. I therefore allow this petition for divorce. Decree nisi to issue to be made absolute within three (3) months of today's date.

Dated and delivered in Mombasa this 30th day of July, 2014.

M. ODERO

JUDGE

In the presence of:

Ms. Okumu h/b Mr. Obara for the Petitioner

Court Clerk Mutisya