



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

**DIVORCE CAUSE NO. 37 OF 2010**

**M N N.....PETITIONER**

**VERSUS**

**J N M.....RESPONDENT**

**RULING**

1. The only issue for me to determine in the application dated 4<sup>th</sup> August 2014 is on to costs, the respondents having conceded to the application.
2. The said application seeks that the petitioner's case be re-opened so that the respondent gets opportunity to cross-examine the petitioner.
3. The background is that the divorce case proceeded on 31<sup>st</sup> July 2014 in the absence of the respondent. The matter had come up earlier on 29<sup>th</sup> May 2014 when it was adjourned to 31<sup>st</sup> January 2014 at the instance of the respondent. Come 31<sup>st</sup> July 2014, the respondent did not attend court and the matter proceeded in his absence. He has now come to court saying that the matter was not in the on-line cause list posted on 30<sup>th</sup> July 2014, but concedes that it was in the cause list posted on 31<sup>st</sup> July 2014 and on the hardcopy cause list circulated on 31<sup>st</sup> July 2014.
4. Quite clearly, the matter proceeded properly on 31<sup>st</sup> July 2014. The date had been taken by consent and was properly posted on the daily cause list. There was no wrong-doing on the part of the petitioner or on the part of the court. It was incumbent on the respondent and counsel to ensure that the matter was not on any of the cause lists for 31<sup>st</sup> July 2014 before absenting themselves from court.
5. By re-opening the matter, the respondent is effectively taking the petitioner and the court back to square one more or less. The petitioner would be entitled to costs in the circumstances, particularly as she has magnanimously conceded the application.
6. The application dated 4<sup>th</sup> August 2014 is hereby allowed in terms of prayers 3 and 4. The respondent shall pay to the petitioner a sum of Kshs.5,000.00 as throwaway costs.

**DATED, SIGNED and DELIVERED at NAIROBI this 28<sup>TH</sup> DAY OF August 2014.**

**W. MUSYOKA**

**JUDGE**

**In the presence of Mr. Khamati advocate for the respondent.**

**No appearance for the applicant.**