



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI**  
**DIVORCE CAUSE NO. 49 OF 2012**

**BETWEEN**

**H W M.....PETITIONER**

**AND**

**P C N.....RESPONDENT**

**K M.....CO-RESPONDENT**

**JUDGEMENT**

1. Marriage was celebrated between the petitioner and the respondent herein on 7<sup>th</sup> March 2008 at the Office of the Registrar of Marriages, Nairobi, under the Marriage Act. The marriage certificate issued serial number *[particulars withheld]* is attached to the petition. The couple thereafter cohabited as husband and wife at divers addresses in Kenya and Tanzania, but at the time of the filing of the petition they resided and worked separately at Embakasi, Nairobi, Kenya and Kigali, Rwanda, respectively. The couple was blessed with issue – E W W, born sometime in 2005.

2. The petition in this matter was filed in court on 20<sup>th</sup> March 2013. The petitioner accuses the respondent of cruelty and adultery. The particulars of cruelty being that the respondent has been neglectful of his duties as a wife and mother, has been non-communicative, has engaged in extra-marital affairs, has denied the petitioner his conjugal rights, taking out family planning methods secretly without the consent of the petitioner, has become a drunkard, has misappropriated funds, among others. The particulars of adultery are that the respondent has had contracted venereal diseases from her many covers and has on several occasions infected the petitioner, she has many lovers who include the co-respondent named in the petition. He avers that the marriage has irretrievably broken down. He further avers that the cruelty visited upon him has caused him pain, heart-break, suffering and distress, forcing him to drop out of school.

3. The petition was served on the respondent who did file an answer to the petition and a cross-petition. She denies the allegations of cruelty and adultery made against her. She avers that the petitioner dropped out of school because he could not cope with the demands of the course he was undertaking. She cross-petitions on the basis of cruelty directed towards her by the petitioner. She accuses him of having verbally abused her, sending abusive mobile phone messages to her relations, of being of ungovernable temper, of physically abusing her, destroying her belongings and treating her with disrespect. She pleads for dissolution of the marriage.

4. The registrar's certificate was issued on 11<sup>th</sup> April 2013, clearing way for the hearing of the matter.
5. The petitioner and the respondent testified on 22nd May 2014 and gave vent to the allegations made in their pleadings, and were cross-examined by counsel appearing.
6. It would appear to me that the marriage between the parties herein has irretrievably broken down. It would also appear to me that there has been no collusion between the petitioner and the respondent in the bringing of these proceedings. There is also no evidence that the petitioner has condoned the cruelty pleaded in the petition and proved in court through oral testimony. The marriage between the parties has failed and is an empty shell.
7. The orders that I am disposed to make in the circumstances are as follows:-
  - a. That I hereby dissolve the marriage celebrated between the petitioner and respondent on 7<sup>th</sup> March 2008;
  - b. That matters concerning the custody and maintenance of the only issue of the marriage shall be determined by the Children's Court;
  - c. That decree *nisi* shall issue forthwith, and may be made absolute after thirty (30) days; and
  - d. That there will be no orders as to costs.

**DATED, SIGNED and DELIVERED at NAIROBI this 14th DAY OF August 2014.**

**W. MUSYOKA**

**JUDGE**

**In the presence of Mr. Chigiti advocate for the respondents.**

**Mr. Omariba for the petitioner.**