



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

DIVORCE CAUSE NO. 38 OF 2013

BETWEEN

S N M.....PETITIONER

AND

H K N.....RESPONDENT

JUDGEMENT

1. Marriage was celebrated between the parties herein on 29th April 2009 at the Office of the Registrar of Marriages, Nairobi Province, under the Marriage Act. The marriage certificate issued serial number [*particulars withheld*] is attached to the petition. The couple thereafter cohabited at Buru Buru Phase 3, Nairobi, Kenya, as husband and wife. The couple was blessed with issue – A M K.
2. The petition in this matter was filed in court on 18th February 2013. The petitioner accuses the respondent of cruelty, particulars being that the respondent has treated the petitioner with disrespect, has threatened her with violence, has physically assaulted her, has been hostile to her, has repeatedly used insulting language towards her, has denied conjugal rights, has uncontrollable and ungovernable temper and that he has failed to provide for the petitioner and the issue of the marriage. She avers that the marriage has irretrievably broken down. She further pleads that due to the violence visited on her she was forced to leave the matrimonial home on 16th October 2010.
3. The petition was served on the respondent but he did not file an answer to the petition nor a cross-petition. There is an affidavit of service sworn by Edward M Kathanzu, on 13th May 2103 and filed in court on 2nd July 2013. The Deputy Registrar cleared the petition on 18th July 2013 to proceed as undefended. As there is no reply to the petition, the petitioner's allegations, as made in the petition, remain uncontroverted.
4. The petitioner testified on 25th May 2014 and gave vent to the allegations made in her petition. No counter evidence was given by the respondent, and therefore the petitioner's testimony was not controverted.
5. It would appear to me that the marriage between the parties herein has irretrievably broken down. It would 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.

6. 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 29th April 2009;
- b. That custody, control and care of the issue of the marriage is granted to the petitioner;
- c. That a permanent injunction shall issue restraining the respondent from interfering with the petitioner;
- d. That decree *nisi* shall issue forthwith, and may be made absolute after thirty (30) days; and
- e. That there will be no orders as to costs.

DATED, SIGNED and DELIVERED at NAIROBI this 14TH DAY OF AUGUST, 2014.

W. MUSYOKA

JUDGE