



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MOMBASA**  
**DIVORCE CAUSE NO. 40 OF 2012**

B K K.....PETITIONER

VERSUS

G M M.....RESPONDENT

**JUDGMENT**

The petitioner **B K K** filed this petition on 7<sup>th</sup> August, 2012 seeking the dissolution of his marriage to the respondent **G M M**. The respondent was duly served with both the petition as well as a summons to enter appearance but she failed to file any documents in response. The matter therefore proceeded as an undefended cause.

The petitioner testified before court on 16<sup>th</sup> June, 2014. He told the court that he and the respondent got married to each other on 30<sup>th</sup> December, 1995 in Busia. The annexed copy of their marriage certificate serial number [Particulars Withheld] provides sufficient proof of the fact of the marriage. Their union was blessed with one child a son **M B** who was born on 7<sup>th</sup> November, 2000 and is now 13 years old. After the marriage the couple lived as man and wife in Mombasa. The petitioner narrates that during the course of the marriage the couple separated several times. The respondent would often leave the matrimonial home to go and live with her brother. When the couple reconciled she would return only to leave again. The petitioner states that their marriage was problematic and he describes his wife as bad-tempered. In 2007 the respondent who was a trained teacher was posted to work in a school in Malindi. She warned the petitioner not to go to her work place in Malindi. Even with the intervention of family members the couple were unable to resolve their differences. They finally separated in 2010 and have lived apart ever since. The petitioner now seeks a divorce.

As stated earlier the respondent did not respond to this petition. The petitioner's evidence therefore remains unchallenged. This court has no reason to doubt the testimony of the petitioner. The picture that is painted is of a union which appears to have been beset with problems. Section 66(2) of the Marriage Act 2014, provides that one of the grounds for the dissolution of a civil marriage is the irretrievable breakdown of that marriage. Section 66(b)(d) of the same Act provides that a marriage is deemed to have irretrievably broken down where

**“(d) the spouses have been separated for at least two years whether voluntary or by decree of the court.”**

Similarly section 66(b) (e) of the Marriage Act provides that irretrievably breakdown of a marriage can be found to have occurred where

**“(e) a spouse has deserted the other spouse for at least three years immediately preceding the date of presentation of the petition.”**

This couple have lived apart since 2010 a period of four (4) years. The respondent upon moving to work in Malindi in 2007 made it clear to the petitioner that he was not welcome to visit her there. There is

clearly a breakdown of the marriage. On this ground I do allow this petition for divorce. Decree nisi to issue to be made absolute within three (3) months of today's date.

In the petition a prayer was made for access to the child of the marriage. This prayer ought properly to be made in the Children Court at the first instance. I will therefore make no pronouncement on access. No order on costs.

**Dated and delivered in Mombasa this 8<sup>th</sup> day of August, 2014.**

**M. ODERO**

**JUDGE**

In the presence of:

Petitioner in person

Court Clerk Mutisya