



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MOMBASA**  
**DIVORCE CAUSE NO. 42 OF 2011**

N M M.....PETITIONER

VERSUS

S N.....RESPONDENT

**JUDGMENT**

Before this court is the petition dated 17<sup>th</sup> October, 2011 filed by N M M seeking the following orders

- “(a) The marriage of the petitioner and respondent be dissolved.**
- (b) The petitioner be given custody of the issue of the marriage with whom they [sic] currently enjoy motherly love and paternal care.**
- (c) That the respondent be ordered to pay costs of this cause.**
- (d) Any other order this Honourable Court may deem fit to grant.”**

The respondent was served with both the petition and a summons to enter appearance but he failed to file any documents in response thereto. The matter therefore proceeded as an undefended cause.

The petitioner testified before the court on 16<sup>th</sup> June, 2014. She told the court that she and the respondent solemnized their union at the Registrar’s Office in Mombasa on the 8<sup>th</sup> day of May, 2008. The petitioner produced a certified copy of their marriage certificate serial number [Particulars Withheld] as proof of the fact of the marriage. Following the marriage the couple lived in Likoni area of Mombasa. They were blessed with one child a son born on 15<sup>th</sup> May, 2010.

The petitioner described their marriage as ‘*problematic*’. She states that after their marriage the respondent left his job. She had to take up full responsibility for all family and household expenses on her meager earnings from selling vegetables. The respondent would often demand money from her and if she declined to give it he would beat her up. She states that the respondent often slept out of the matrimonial home and when she called his number a woman would respond. She further claims that the respondent would take away her ATM card and would withdraw sums of upto Kshs. 16,000/= from her account. She also claims that the respondent became an alcoholic and drug addict and was abusing heroin necessitating her to take him to Port Reitz hospital for treatment. All her efforts to get him to change his ways were to no avail. The respondent eventually left their matrimonial home in 2011 and moved back to his family home in Nakuru. The petitioner remained in Mombasa with their child whom she is now

raising single handedly. She states that their marriage has broken down and seeks a divorce.

As stated earlier the respondent was properly served but chose not to participate in these proceedings. There is therefore no challenge to the petitioner's evidence and the same remains uncontroverted. I did observe the demeanour of the petitioner and she struck me as an honest witness. I have no reason to doubt her veracity.

Section 66(2) of the Marriage Act, 2014 provides the grounds on which a divorce maybe granted. This includes the ground of cruelty. Cruelty is not limited only to physical assault. A spouse may subject another to emotional and psychological torture which also amounts to cruelty. By leaving the financial burden of the family to the petitioner, by sleeping out of the matrimonial home and by decamping to Nakuru the respondent can certainly be said to have been cruel. In any event it is difficult to see how their marriage would subsist if he has moved across the country to Nakuru.

One of the grounds for dissolution of a marriage is the irretrievable break-down of marriage. Section 66(b)(d) of the Marriage Act, 2014 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.”**

From 2011 the couple have lived apart and infact live in different towns. The petitioner stated that there was no chance of any reconciliation. It is clear the union has broken down. All that remains is a shell. I therefore allow this petition for divorce. Decree nisi to issue to be made absolute within three (3) months of today's date.

The petitioner made a prayer for custody of their child. This is a prayer which properly ought to be canvassed before the Children Court. However, I note that the respondent abandoned both the petitioner and the child. He has shown no interest in the child. The child is currently living with the petitioner who provides for all of his needs. I therefore direct that the current status quo with respect to the custody of the child is to be maintained pending any further orders from the Children Court.

Finally this being a family matter I make no orders on costs.

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

**M. ODERO**

**JUDGE**

In the presence of:

Ms. Okumu for Petitioner

Court Clerk Mutisya