



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**DIVORCE CAUSE NO. 10 OF 2008**

**BETWEEN**

**J M K.....PETITIONER**

**AND**

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

**JUDGEMENT**

1. On 7<sup>th</sup> February 1997 the Petitioner, then a bachelor known as J M K was lawfully married to the Respondent M N M then a spinster, and a certificate Serial No. *[particulars withheld]* issued to them in accordance with the **Marriage Act Cap 150 Laws of Kenya**. The marriage was celebrated at the office of the Registrar of Marriages in Nairobi and thereafter they cohabited as husband and wife in Nairobi. They were blessed with one issue of the marriage namely M M M aged 8 years 3 months at the time of filing the Petition.

Both the Petitioner and Respondent are domiciled in Kenya where they are self-employed designers.

2. The Petition filed on 7<sup>th</sup> February 2008 is premised on grounds of cruelty and desertion since the year 2006 to date. The Petitioner avers that the Respondent was guilty of wilful and unjustifiable acts which inflicted pain, anguish and misery upon him. The acts which were said to be of a psychological nature, were such as on several occasions the Respondent refusing to speak to the Petitioner and refusing to allow their son to speak to him. They also included the Respondent's attempts to have her sister adopt the child of the marriage and also provoking the Petitioner so as to bring about circumstances which would cause him to leave America without his son. He further avers that the Respondent frustrated his attempts to run a business in America despite having closed his business in Kenya to be with her.

3. The Respondent was served with the Petition and in the answer to Cross-Petition dated 28<sup>th</sup> February 2008, the Respondent denies the allegations made in the Petition, and avers that she did not desert the matrimonial home. It is her assertion that they both agreed to have a fresh start to their marriage in Atlanta Georgia, in the United States of America and denies the allegation of cruelty to the Petitioner. The Respondent has dismissed the Petitioner's Petition and the grounds thereof and stated that the marriage ought to be saved as it has not broken down irretrievably.

4. On 15<sup>th</sup> May 2008 the Deputy Registrar of the Division certified the matter as suitable to proceed as a defended cause for one day at Nairobi. On 2<sup>nd</sup> February 2012 the matter came up for hearing before Hon. Njagi J. The Petitioner testified and basically reiterated what he had set out in his Petition. The Respondent did not attend court to testify despite several adjournments being granted to give her a chance to avail herself. On 5<sup>th</sup> December 2013 the matter came up before Musyoka J who directed that it should

proceed from where Njagi J had left it. On 16<sup>th</sup> October 2014 the trial was finally closed without the Respondent's testimony. The Petitioner's written submissions were served upon the Respondent's Advocate on record without eliciting any response.

5. The Petitioner therefore prays that the marriage be dissolved. He confirms that this Petition has not been presented or prosecuted in collusion with the Respondent, neither has he connived or condoned the acts of cruelty and the desertion complained of. He also certifies that there have been no previous proceedings filed regarding the marriage.

6. According to the Petitioner, several attempts have been made at reconciliation but these appear to have come to nought. The Respondent did not avail herself in court after several adjournments, to defend the marriage that she believes is still capable of being salvaged. Despite the protestations of the Respondent it is apparent from the affidavit and oral evidence that the marriage celebrated between the parties herein on 7<sup>th</sup> February 1997, has broken down irretrievably and cannot be salvaged.

7. In the circumstances I make orders as follows:

- a. That the marriage celebrated between the Petitioner and the Respondent at the Registrar's office in Nairobi on 7<sup>th</sup> February 1997, is hereby dissolved.
- b. That Decree Nisi dissolving the said marriage is hereby issued, to be made absolute thirty (30) days from the date of this judgment.
- c. That matters concerning the custody of the child of the marriage shall be determined by the Children's Court.
- d. There shall be no orders as to costs.

**SIGNED DATED and DELIVERED** in open court this 27<sup>th</sup> day of **November 2014**.

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**L. A. ACHODE**

**JUDGE**