



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**DIVORCE CAUSE NO. 242 OF 2013**

**BETWEEN**

**Z A A**.....**PETITIONER**

**AND**

**S O S**.....**RESPONDENT**

**JUDGEMENT**

1. Marriage was celebrated between the parties herein on 21<sup>st</sup> July 1989 at the office of the Registrar of Marriages in Nairobi. A certificate of marriage serial number *[particulars withheld]* was issued to them in accordance with the Marriage Act. The couple was blessed with three issues – V, D M and D J, born in 1989, 1990 and 1993, respectively.
2. The petition in this matter was filed in court on 14<sup>th</sup> November 2013. The petitioner accuses the respondent of cruelty. He is said to have had cut off all financial aid and communication to the family, engaged in several extra-marital relationships, remained aloof to the respondent's emotional needs, maligned the respondent's character, treated her with contempt, among others. It is also alleged that he constructively deserted the petitioner since 2002, and that the petitioner has been denied her conjugal rights.
3. The petitioner prays for dissolution of the marriage, alimony pending proceedings for disposal of matrimonial property, maintenance, and costs of the suit.
4. The petition was served on the respondent through DHL courier service following an order made herein on 13<sup>th</sup> March 2014. There is an affidavit on record on the said service, sworn on 29<sup>th</sup> April 2014 by one Anthony S. O. Odhiambo, advocate, stating that service was on 7<sup>th</sup> April 2014 and attaching supporting proof thereof. He did not appear nor file answer to the petition. On 31<sup>st</sup> May 2014 the Deputy Registrar certified that the matter proceeds for hearing as an undefended cause. As there is no reply, the petitioner's allegations, as made in the petition, remain uncontroverted.
5. The petitioner testified on 29<sup>th</sup> September 2014 and gave vent to the allegations made in her petition. No counter evidence was given by the respondent, and therefore the petitioner's story was not controverted.
6. I am satisfied from the recorded evidence that the respondent was cruel to the petitioner. He has consistently stayed away from the petitioner since 2002. The last time there was conjugal

connection between them was in 2005.

7. 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 proved in the matter.
8. On maintenance and alimony, I note that the petitioner did not lead any evidence on her needs and on the possible means of the respondent. Consequently I have no basis upon which I can make the orders sought on these two items.
9. I hereby dissolve the marriage celebrated between the petitioner and respondent on 26<sup>th</sup> October 2007. Decree *nisi* shall issue forthwith and shall be made absolute after thirty (30) days. There will be no orders as to costs.

**DATED, SIGNED and DELIVERED at NAIROBI this 11<sup>th</sup> DAY OF December 2014.**

**W. MUSYOKA**

**JUDGE**

**In the presence of Miss Chepkurui advocate for the applicant.**