



**REPUBLIC OF KENYA**

**High Court at Mombasa**

**Divorce Cause 44 of 2010**

M.P.V.N.....PETITIONER

VERSUS

M.K.H.....RESPONDENT

**JUDGMENT**

The petitioner **M.P.V.N**(hereinafter referred to as '*the petitioner*') has filed this petition seeking the dissolution of her marriage to **M.K.H** (hereinafter referred to as '*the Respondent*'). The respondent despite having been served with the petition failed to enter appearance and failed to file any reply to the petition. The matter therefore proceeded as an undefended cause.

The petitioner testified on her own behalf in open court. She told the court that she is a German national who first came to Kenya in 1977. From that time she regularly visits Kenya at least three times a year. The petitioner told the court that she met the respondent and married him on 9<sup>th</sup> September, 2009 in Kikambala. She has produced a copy of their marriage certificate serial No. [...] as proof of the fact of the marriage.

The couple began to live as man and wife in Kikambala. The couple bore no children together. The petitioner asserts that all was well in their union until April, 2010 when the respondent began to drink heavily and became violent both towards her and other people. She told the court that on 10<sup>th</sup> May, 2010 the respondent assaulted her in their home. She produced in court a photograph showing the injuries and bruises resulting from that attack **Pexb2**. The photograph is in colour and shows bruises around the petitioner's eyes and on her face in general. She reported the assault to police and the same was duly recorded under OB No. 10 of 10<sup>th</sup> May, 2010. The petitioner states that the next time the respondent attacked her she again reported to police who took her to Kilifi Hospital for treatment. She has availed her treatment notes from the hospital as exhibits **Pexb2**. Further, as proof of the violent tendencies of the respondent the petitioner has produced a photograph of a door which she alleges was kicked in by the respondent in his attempt to gain access to the alcohol stores in the house.

As stated earlier the respondent despite having notice of these proceedings declined/neglected to enter appearance and/or file any reply. He also did not appear in court to give his side of the story. The result is the evidence adduced by the petitioner remains uncontroverted.

Section 8(1)(c) of the Matrimonial Causes Act Cap 152 provides that '*cruelty*' is one of the grounds provided for divorce in this country. To subject one's wife to persistent assault and battery certainly amounts to physical cruelty which no wife should be required to endure. I am satisfied that this ground of cruelty has been proved. I therefore allow the petition for dissolution of the marriage. Decree nisi to issue to be made absolute within three (3) months of today's date. No order on costs.

**Dated and delivered in Mombasa this 28<sup>th</sup> day of March, 2013.**

**M. ODERO**

**JUDGE**

In the presence of:

Ms. Challa h/b Mr. Tarus for Petitioner

Court Clerk Mutisya