



REPUBLIC OF KENYA

High Court at Mombasa

Divorce Cause 29 of 2011

M.M.M.....PETITIONER

VERSUS

F.M.K.M.....RESPONDENT

JUDGMENT

Before court is the petition dated 8th June, 2011 brought by one **M.M.M** (hereinafter referred to as '*the petitioner*') in which he makes the following prayers:-

- “1. THAT the marriage of your petitioner and the respondent be dissolved.**
- 2. THAT this Honourable court does exercise discretion to grant a decree nisi to the petitioner.**
- 3. THAT the respondent may be ordered to pay the costs of these proceedings.**
- 4. THAT the petitioner may have such further or other relief as this Honourable court may deem fit to grant.”**

There is evidence that the respondent **F.M.K.M** was served with both the petition and a summons to enter appearance. However, she neither entered appearance nor filed any response to the petition. The matter therefore proceeded as an undefended cause.

In his evidence the petitioner told the court that he and the respondent entered into a statutory marriage at the Mbitini AIC Church at Makueni District on 20th August, 1994. He has produced a copy of the marriage certificate serial No. [PARTICULARS WITHHELD] as proof of this fact **Pexb1**. After their marriage the couple cohabited as man and wife first in Mikindani in Mombasa and later at the Mtongwe Navy Base. Their union produced four children two daughters and two sons aged between 5 years to 18 years.

The petitioner told the court that during the course of the marriage the respondent began to exhibit uncaring and cruel behaviour towards him. He cites as examples instances where she would decline to cook, would lock him out of the matrimonial room so he would have to sleep outside in the corridor and other instances where the respondent would absent herself for days on end from the matrimonial home. He states that on one occasion the respondent left the matrimonial home for four (4) days leaving him with a four (4) week old child to care for. He had to call in a neighbour to assist him. Certainly by

evicting the petitioner from the matrimonial bed, abandoning the children and sending abusive text messages amounts to cruelty on her part. Cruelty is one of the grounds upon which a marriage can be nullified as per section 8(1) (d) of the Matrimonial Causes Act Cap 150. The petitioner told the court that several efforts were made by family and friends to help the couple reconcile to no avail. Four years ago the couple separated. The respondent then obtained custody of all four children through a court order and the petitioner is currently paying maintenance of Kshs. 750,000/= per month. The evidence of the petitioner has neither been challenged nor controverted. This court has no reason to disbelieve him. The clear picture is of a marriage that has irretrievably broken down. All that remains is a shell. The court cannot and will not seek to compel a couple who do not want to live together to remain in a marital union. I find that the petition has merit and I do allow the prayer for dissolution of the marriage. *Decree nisi* to issue to be made absolute three (3) months from today's date.

Dated and delivered in Mombasa this 25th day of March, 2013.

M. ODERO

JUDGE

In the presence of:

Ms. Anyumba h/b Ms. Kayatta for Petitioner

Court Clerk Mutisya