



**REPUBLIC OF KENYA**

**High Court at Nairobi (Nairobi Law Courts)**

**Divorce Cause 159 of 2010**

**N. K. .... PETITIONER**

**VERSUS**

**T. O. A. .... RESPONDENT**

**J U D G M E N T**

The Petitioner and the Respondent were on 20<sup>th</sup> September 1996 married at the Deputy Commissioner's Office in Ropar, India. After the celebration of the marriage, the Petitioner and the Respondent settled in Kenya. The Petitioner has since acquired Kenyan citizenship. This court therefore assumes jurisdiction on the basis of the domicile of the parties to this petition for divorce. The marriage has been blessed with two (2) issues. According to the Petitioner, the marriage has not been a happy one. She accuses the Respondent of treating her with cruelty. She sets out the particulars of cruelty in her petition for divorce. The said instances of cruelty include physical assault; failure to provide for the Petitioner and the children; neglect of his responsibility as both husband and father; denial of conjugal rights to the Petitioner and engagement in extra-marital affairs. The Petitioner further accuses the Respondent of committing adultery with one G.N.M. The Petitioner avers that the Respondent had even purported to contract a civil marriage with the said G.N.M. It is for the above reasons that the Petitioner formed the view that the marriage was no longer sustainable hence her petition for divorce.

The Respondent was served with petition for divorce. He did not enter appearance and neither did he file any papers in opposition to the petition for divorce. The Deputy Registrar of the court certified this petition be heard as undefended divorce cause. During the hearing of the petition, this court heard oral evidence adduced by the Petitioner. She essentially reiterated the contents of her petition for divorce. She stated that the Respondent had obtained her hand in marriage by false pretences. He represented to her that he was from a wealthy family. The reality was however the opposite. She told the court that since she arrived in Kenya, she had experienced extreme hardship in the marriage. She came to discover that the Respondent was married to another woman. The Respondent had also become irresponsible and had threatened to physically harm her. She told the court that she had been separated from the Respondent since January 2011. She was of the view that the marriage was no longer sustainable. She therefore urged the court to grant her petition for divorce.

This court has carefully considered the facts of this case. It was clear from the evidence adduced by the Petitioner that the matrimonial offence of cruelty had been established. The Respondent physically threatened the Petitioner. He neglected his responsibility to financially provide for the Petitioner and the children of the marriage. He denied the Petitioner her conjugal rights. The Petitioner further proved the matrimonial offence of adultery. She established that the Respondent was cohabiting with another woman during the subsistence of their marriage. The court formed the opinion that the marriage had irretrievably broken down with no possibility of salvage. This court will grant the petition for divorce.

In the premises therefore, the marriage between the Petitioner and the Respondent which was celebrated on 20<sup>th</sup> September 1996 at Ropar, India is hereby dissolved. Decree nisi dissolving the said marriage is hereby issued. The decree nisi shall be made absolute thirty (30) days from the date of this judgment. The Petitioner should have the custody of the children of the marriage. There shall be no orders as to costs.

**DATED AT NAIROBI THIS 18<sup>th</sup> DAY OF APRIL, 2013**

**L. KIMARU  
JUDGE**