



**REPUBLIC OF KENYA**

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

**DIVORCE CAUSE NO.84 OF 2012**

**F W N.....PETITIONER**

**VERSUS**

**J M.....RESPONDENT**

**JUDGMENT**

The Petitioner and the Respondent were on 6<sup>th</sup> September 2008 married under the **African Christian Marriage and Divorce Act**. The marriage was celebrated at Shunem Gardens in Embu. The marriage was blessed with one child, born on 15<sup>th</sup> July 2011. The child was a special needs child. He died in March 2013. According to the Petitioner, since the celebration of the said marriage, the Respondent had treated her with cruelty. In the particulars of cruelty, the Petitioner averred that the Respondent had, *inter alia*, exhibited uncaring and complete disregard of her feelings. She accused the Respondent of being financially irresponsible to the extent of using the Petitioner's money without her authority. From the petition, it was clear that the fact that the child born of the marriage was a special needs child, exerted an emotion toll in the marriage. The Petitioner accused the Respondent of showing no care or giving little or no emotional support to the Petitioner and the child of the marriage. The Petitioner averred that the Respondent had for long stretches, lived away from the matrimonial home. The Petitioner accused the Respondent of committing adultery with various women thus causing her to suffer mental anguish. The Petitioner testified that the Respondent deserted the matrimonial home on 10<sup>th</sup> April 2012 and had since then not returned to the matrimonial home. It was for these reasons that the Petitioner is seeking to have the marriage dissolved. The Petitioner was emphatic that at this stage of their relationship, reconciliation was not one of the options.

The Respondent was duly served with notice to enter appearance together with a copy of the petition for divorce. The Respondent did not enter appearance. Neither did he file an answer to the petition. The Deputy Registrar of this court certified this petition as one which could be heard as undefended divorce cause. This court has carefully considered the facts of this petition for divorce. It was apparent that the fact that the Petitioner and the Respondent had the misfortune of having a special needs child took a toll on their marriage. It was clear that the Respondent began withdrawing emotionally from the Petitioner when he realized that the child born of their marriage was a special needs child. The Respondent refused to financially and emotionally support the Petitioner and the child of the marriage. Added to this mix was the fact that the Respondent began openly engaging in extra marital affairs which caused mental anguish to the Petitioner. The Respondent even failed to attend the funeral of the child when he died. The evidence adduced by the Petitioner was uncontroverted. It proved to the required standard of proof on a balance of probabilities the matrimonial offences of cruelty and adultery. It was apparent that the Petitioner and the Respondent had made no attempt at reconciliation. However, in light of the circumstances of this cause, it is clear that such attempt may not yield any fruit. In the premises therefore, this court will grant the petition for divorce.

The marriage celebrated between the Petitioner and the Respondent on 6<sup>th</sup> September 2008 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. There shall be no orders as to cost.

**L. KIMARU**

**JUDGE**

**DATED, COUNTERSIGNED AND DELIVERED ON 27<sup>TH</sup> DAY OF JUNE 2013.**

**W. MUSYOKA**

**JUDGE**