



**REPUBLIC OF KENYA**

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

**DIVORCE CAUSE NO.137 OF 2010**

**I W W M.....PETITIONER**

**VERSUS**

**P G M.....RESPONDENT**

**JUDGMENT**

The Petitioner and the Respondent were on 25<sup>th</sup> July 1991 married under the **Marriage Act**. They were married at the Registrar’s Office in Nairobi. The Petitioner and the Respondent cohabited as husband and wife at various estates within Nairobi between the time of the marriage to July 2009 when they were separated. The marriage has been blessed with two (2) issues, born in July 1989 and in March 1995. Although the Petitioner predicated her petition for divorce on the grounds of cruelty and adultery, and although the Respondent also cross- petitioned for divorce on grounds of cruelty, at the hearing of the cause, the petition for divorce and the cross-petition were amended to include the ground of constructive desertion. It was only this ground of divorce that was prosecuted during the hearing of the petition for divorce. It was only the Petitioner who testified during the hearing of the petition. She told the court that she had not lived with the Respondent since 2005 but was formally separated from him since July 2009. She asked the court to grant her petition for divorce. The Respondent did not have any evidence to offer in light of the evidence adduced by the Petitioner.

This court has carefully considered the facts of this petition for divorce. It has also considered the pleadings filed by the parties herein in support of their respective opposing positions. From the said facts, it was clear that the marriage between the Petitioner and the Respondent has indeed irretrievably broken down with no possibility of salvage. It was apparent that the initial issue of discord between the Petitioner and the Respondent was how the Respondent perceived the family finances were being managed by the Petitioner especially when the Respondent secured employment in South Africa. The allegation of adultery made by the Petitioner should thus be viewed in the context of this difference. This problem escalated to an extent that the Petitioner left the matrimonial home in July 2009. According to the Respondent, the Petitioner cleared their matrimonial home of all their movable property. From the bitter tone of the pleadings filed by the Petitioner and the Respondent, it was clear that there is no chance that the Petitioner and the Respondent would ever be reconciled. To their credit, the Petitioner and the Respondent, despite their differences have deemed it appropriate to put the welfare of their children in the front burner. In the premises therefore, this court will grant the petition for divorce on the established ground of desertion. The Petitioner and the Respondent have been separated for more than three (3) years. It is only fair that they be given a chance to move on with their respective lives.

In the premises therefore, the marriage celebrated between the Petitioner and the Respondent on 25<sup>th</sup> July 1991 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 costs. The Petitioner and the Respondent agreed that they shall contribute towards the maintenance and the education of the children of the marriage. That is as it should be. Should there be any disagreement, either party shall be at liberty to apply.

**L. KIMARU**

**JUDGE**

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

**W. MUSYOKA**

**JUDGE**