



**REPUBLIC OF KENYA**

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

**DIVORCE CAUSE NO. 13 OF 2009**

**BETWEEN**

**A N G.....PETITIONER**

**AND**

**L M G.....RESPONDENT**

**JUDGEMENT**

Marriage was celebrated between the parties herein on 4<sup>th</sup> September 1992 at the Office of Registrar of Marriage in Nairobi. A certificate of marriage serial number (particulars withheld) was issued to them in accordance with the Marriage Act. The couple cohabited at various addresses in Nairobi, as husband and wife. The couple were blessed with issue, two children, S R Ad G (1994) and R A (minor) (1998).

The petition in this matter was filed on 27<sup>th</sup> January 2009. The petition is for dissolution of marriage. The petitioner accuses the respondent of adultery, cruelty and desertion. On adultery, it is alleged that he has committed adultery with women unknown to the petitioner. She has listed several particulars to support the allegations of cruelty. The particulars range from lack of companionship, insensitivity, lack of communication, use of abusive language in presence of children and relatives, drunkenness, physical abuse and psychological torture. On desertion, it is alleged that he moved out of the matrimonial home On 16<sup>th</sup> April 2007. He never come back.

The petition and a notice to appear were served on the respondent on, and he filed appearance or answer to the petition. The answer is dated 4<sup>th</sup> March 2009, in it the respondent denies all the allegations levelled against him by the petitioner. He says that he has always been a loving husband. He accuses the petitioner of having changed after the trauma she suffered following a car-jacking incident wherein she was raped. He says that she was the one who left the matrimonial home on 16<sup>th</sup> April 2007, never to come back. To this the petitioner filed a reply to answer to the petition, dated 31<sup>st</sup> March 2009 and filed in court on 6<sup>th</sup> April 2009. She conceded the carjacking and rape ordeal, but says that she moved out of the matrimonial home on account of the respondent's violent tendencies, cruelty and extramarital affairs.

The Deputy Registrar certified the on 19<sup>th</sup> January 2011 that the matter proceeds for hearing as a defended cause. The petition was heard on 24<sup>th</sup> May 2013. Only the petitioner showed up and testified, the respondent did not attend court and neither did he testify. The ground for adultery was dropped. The petitioner testified on the grounds of cruelty and desertion. As the respondent did not attend court to expound on his statement in answer to the petition. The matters set out in the answer to the petition therefore remain as mere allegations. The petitioner's case is therefore uncontroverted.

It would appear to me from the papers filed in court and the oral evidence given in court on 24<sup>th</sup> May 2013 that the alleged marriage between the parties herein has totally broken down. It would also appear to me that the petitioner was not in any way contributory to the breakdown of the marriage.

I am satisfied that the marriage celebrated between the petitioner and the respondent has failed on account of desertion and cruelty by the respondent. I will therefore make the following orders:

1. I decree the dissolution of the marriage celebrated between the petitioner and respondent on 4<sup>th</sup>

- September 1992.
2. Decree *nisi* shall issue forthwith and shall be made absolute after thirty (30) days.
  3. A permanent injunction shall issue restraining the respondent from interfering with the petitioner's life in any manner.
  4. There will be no orders on costs.

The petitioner did not lead any evidence to support the prayer for maintenance and therefore there is no basis upon which I can make that order.

**SIGNED DATED and DELIVERED in open court this 15th day of August, 2013.**

**W. M. MUSYOKA**

**JUDGE**