



**REPUBLIC OF KENYA**

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

**DIVORCE CAUSE NO.121 OF 2012**

**D M K..... PETITIONER**

**VERSUS**

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

**JUDGMENT**

The Petitioner and the Respondent were on 27<sup>th</sup> May 2000 married under the **Marriage Act**. The marriage was celebrated at the Gospel Revival Centre, Nairobi. The Petitioner and the Respondent then cohabited together as husband and wife in Kangemi in Nairobi. The marriage was blessed with two issues, born in 2000 and 2003. According to the Petitioner, since the celebration of the said marriage, the Respondent had treated him with cruelty. In the particulars pleaded in the petition for divorce, the Petitioner averred *inter alia*, that the Respondent was a person of violent temper; was fond of hurling insults at him whenever he inquired where she had spent the night away from the matrimonial home; had denied the Petitioner his conjugal rights without reasonable excuse; had colluded with his son from a previous relationship to threaten and subsequently throw the Petitioner out of the matrimonial home. It was for these reasons that the Petitioner stated that he was forced to leave the matrimonial home on 15<sup>th</sup> December 2006. Since then, the Respondent had not allowed the Petitioner to return to the matrimonial home. The Petitioner is of the opinion that his marriage to the Respondent had irretrievably broken down with no possibility of salvage. He urged the court to grant his petition for divorce.

The Respondent was duly served with the summons to enter appearance together with a copy of the petition for divorce. She did not enter appearance. Neither did she file any papers in answer to the petition. The Deputy Registrar of this court certified this cause as a suitable one to be heard as an undefended divorce cause by this court. During the hearing of the cause, this court heard oral evidence adduced by the Petitioner. He basically reiterated the contents of his petition for divorce. He testified that he was forced to leave the matrimonial home after the Respondent had treated him with extreme cruelty. He stated that any effort at reconciliation had been rebuffed by the Respondent. He therefore urged the court to grant his petition for divorce.

From the facts of this cause, it was clear that the marriage between the Petitioner and the Respondent had indeed irretrievably broken down with no possibility of salvage. The evidence adduced by the Petitioner established, to the required standard of proof on a balance of probabilities, the matrimonial offence of cruelty. That evidence was uncontroverted. The treatment that was meted to the Petitioner by the Respondent cannot, in the circumstance, be said to be a normal treatment in a happy marriage. The Petitioner and the Respondent have been separated for more than six (6) years. If there was any chance that reconciliation would work, then the same would have been attempted during this intervening period. The Petitioner therefore established a case for this court to grant his petition for divorce.

In the premises therefore, the marriage celebrated on 27<sup>th</sup> May 2000 between the Petitioner and the Respondent is hereby dissolved. Decree nisi dissolving the said marriage is hereby issued. The said decree nisi shall be made absolute thirty (30) days from the date of this judgment. There shall no orders as to costs.

**L. KIMARU**

**JUDGE**

**DATED, COUNTERSIGNED AND DELIVERED ON 15<sup>TH</sup> DAY OF AUGUST 2013.**

**W. MUSYOKA**

**JUDGE**