



**REPUBLIC OF KENYA**

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

**DIVORCE CAUSE NO.80 OF 2011**

**J K S.....PETITIONER**

**VERSUS**

**H K K.....RESPONDENT**

**JUDGMENT**

The Petitioner and the Respondent were on 18<sup>th</sup> December 1996 married under the **Marriage Act**. The marriage was celebrated at the Registrar's Office, Nairobi. Prior to that, the Petitioner and the Respondent had cohabited together as husband and wife for a period of two (2) years. The marriage has been blessed with two (2) children, both daughters, born in 1995 and 1997. According to the Petitioner, the marriage has not been a happy one. She averred that since the celebration of the marriage, the Respondent had treated her with extreme cruelty. She stated *inter alia*, that the Respondent was a person of ungovernable temper, was an alcoholic, had developed a habit of insulting and threatening her and the children of the marriage, had refused to provide for the Petitioner and the children of the marriage and had failed to pay the school fees for the said children. It was for the above reasons that the Petitioner stated in court that she had been separated from the Respondent since the year 2000. The Petitioner averred that her marriage to the Respondent had thus irretrievably broken down as a result of the said cruelty. The Petitioner therefore prayed that the court grants her petition for divorce. She further prayed for the custody of the children of the marriage. She also prayed that the Respondent be ordered to pay alimony and maintenance to her and the children of the marriage.

The Respondent was duly served with summons to enter appearance together with a copy of the petition. The Respondent did not enter appearance. Neither did he file any response to the petition. The Deputy Registrar of this court certified this case as a suitable one which may be heard by this court as an undefended cause. During the hearing of this petition, this heard oral evidence adduced by the Petitioner. She basically reiterated the contents of her petition for divorce. She further stated that the Respondent was abusive especially when drunk. It was during such periods that the Respondent was violent towards her children of the marriage. She told the court that she had been separated from the Respondent since the year 2000. In the thirteen (13) years period that she had been separated from the Respondent, she had not communicated with him.

Upon evaluating the facts of this divorce cause, it was clear to this court that the Petitioner had established, to the required standard of proof on a balance of probabilities, that indeed her marriage to the Respondent had irretrievably broken down with no possibility of salvage. The instances of cruelty pleaded in the petition for divorce clearly proved the matrimonial offence of cruelty. The Petitioner and the Respondent have been separated for a period of thirteen (13) years. If there was any possibility that the marriage would salvaged, then reconciliation efforts would have borne fruits during the intervening period. As it were, the only thing remaining for this court to do is to close that chapter of the Petitioner and the Respondent's marital life by granting the petition for divorce.

In the premises therefore, the marriage celebrated between the Petitioner and the Respondent at the Registrar's Office Nairobi on 18<sup>th</sup> December 1996 is hereby dissolved. Decree nisi dissolving the said marriage is hereby issued. It shall be made absolute thirty (30) days from the date of this judgment. The Petitioner shall have the custody of the children of the marriage. As regards the issue of maintenance, the Petitioner shall be at liberty to file an appropriate suit before the Children's Court for the determination of that question. There shall be no orders as to costs.

**L. KIMARU**

**JUDGE**

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

**W. MUSYOKA**

**JUDGE**