



**REPUBLIC OF KENYA**

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

**DIVORCE CAUSE NO. 14 OF 2013**

**L N C.....PETITIONER**

**D M K.....RESPONDENT**

**JUDGMENT**

The Petitioner and the Respondent started cohabiting together as husband and wife in the year 2003. They formalized their marriage on 23<sup>rd</sup> December, 2003 when they were married at the Registrar's office in Nairobi. The marriage was blessed with two (2) issues, born on 1<sup>st</sup> August, 2004 and 2<sup>nd</sup> October, 2007 respectively. According to the Petitioner, since the celebration of the said marriage, the Respondent had treated her with cruelty. In particular, she stated that the Respondent has been physically violent towards her that at times led her hospitalized. She accused the Respondent of threatening her and being verbally abusive towards her thereby causing her anxiety and mental anguish. According to the Petitioner, her marriage to the Respondent had irretrievably broken down with no possibility of salvage. The Petitioner urged the court to grant her petition for divorce and make a further order directing the Petitioner have custody of the minor children of the marriage.

The Respondent was served with the notice of appearance together with a copy of the petition for divorce. He did not enter appearance. Neither did he file any papers in answer to the petition for divorce. The Deputy Registrar of this court issued a certificate certifying this cause as suitable one to be disposed of by this court as an undefended divorce cause.

At the hearing of the petition, this court heard oral evidence adduced by the Petitioner. She testified that the marriage began to break down after the Respondent was deported back to Kenya during the 2004 Olympics in which he was scheduled to participate. According to the Petitioner, since then, the Respondent became arrogant and had become violent towards her. She stated that the Respondent had been physically assaulting her and that at one time she had her tooth broken. The Petitioner told the court that in June, 2012 the Respondent hit her on the head with a bottle and threatened to kill her. She managed to flee to her sister's home. She has been separated from Respondent since the 16<sup>th</sup> June 2012.

From the evidence adduced, it was clear that the marriage between the Petitioner and the Respondent has indeed irretrievably broken down with no possibility of salvage. The accusations of cruelty and proof of physical violence on the Petitioner is sufficient proof that the marital relationship between the Petitioner and the Respondent has deteriorated beyond repair. The Petitioner and the Respondent are no longer living together. They have been separated for a period of over one year. This court formed the opinion that indeed the matrimonial offence of cruelty has been proved to the required standard of proof on a balance of probabilities. This court will grant petition for divorce.

In the premises therefore, the marriage solemnized on 23<sup>rd</sup> December 2003 between the Petitioner and the Respondent at the Registrar's Office in Nairobi 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. The Petitioner shall have the custody of the child of the marriage. There shall be no orders as to costs.

**DATED AT NAIROBI THIS 31<sup>ST</sup> DAY OF OCTOBER 2013**

**L. KIMARU**

**JUDGE**