



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT EMBU**

**DIVORCE NO. 3 OF 2012**

**AKM.....PETITIONER**

**VERSUS**

**BIN..... RESPONDENT**

**J U D G M E N T**

The petitioner (AKM) filed this petition against the respondent (BIN) seeking divorce on the following grounds:-

- a. cruelty
- b. desertion

The respondent in his reply denied all the petitioner's claims. He cross-petitioned for divorce on the grounds of:-

- a. cruelty
- b. adultery

There was no reply to the cross-petition.

When the petition came for hearing the petitioner stated that she got married to the respondent in 2004 in Nairobi at the Registrar's office. She produced a copy of their marriage certificate (PEXB1). She further stated that since their marriage she had known no peace. The reason being that the respondent took to irresponsible drinking and would beat her up. At times he would go for days without returning home.

In 2007 he came home and broke all windows to the house. The matter was reported to the police and the respondent was charged vide Criminal Case No. 2610/2007. They later reconciled and the petitioner withdrew the case. The respondent gave her money for replacement of the broken windows which she replaced. She further testified that the two parties have not lived together since 2009 when the respondent left. They are blessed with one child VM.

On the other hand the respondent said it is him who has been mistreated by the petitioner. She would deny him entry into the matrimonial home by locking the gate to the house. It was during such an incident that he broke windows. He also stated that the petitioner used to cheat on him. On one occasion he found one Eric in the house in very unclear circumstances in the morning. During cross-examination the petitioner denied the claims of cruelty. She said she had given the respondent copies of keys to the gate and the house, and never barred him from coming to the house. And the respondent in cross-examination said they stoppled living together in 2010.

From the evidence and pleadings it is confirmed that a marriage was solemnized between the petitioner and respondent on 5/5/2004 at the Registrar's office Nairobi (PEXB1). It is also undisputed that each party has asked for divorce on account of cruelty. Each has given her/his side of the story. None of them admits to being cruel to the other. However, the fact that they have not lived together nor consummated their marriage since 2009/2010 tells a lot about them they have each clearly stated that their marriage has irretrievably broken down and there is no turning point.

It is evident from the pleadings and the evidence that the petitioner and respondent can no longer stay together because of what has happened between them. Their marriage has irretrievably broken down. The best that this Court can do for them is to grant their cherished wish by dissolving their marriage which I hereby do. The petition and cross-petition are both allowed.

A *decree nisi* will issue and the same will be confirmed after six (6) months. Each party to bear his/her costs.

**DATED, SIGNED AND DELIVERED AT EMBU THIS 22<sup>ND</sup> DAY OF NOVEMBER, 2013.**

**H.I. ONG'UDI**

**JUDGE**

**In the presence of:-**

**Ms. Nyaga for Fatuma for Petitioner**

**Njue CC**