



**REPUBLIC OF KENYA**

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

**DIVORCE CAUSE NO. 216 OF 2012**

**B A L.....PETITIONER**

**-VERSUS-**

**G H G.....RESPONDENT**

**JUDGEMENT**

The Petitioner and the Respondent were married on 9<sup>th</sup> January 2010 at the Registrar's Office in Nairobi. The marriage was celebrated under the **Marriage Act**. The Petitioner and the Respondent were not blessed with any issue. The Petitioner alleged that since the celebration of the marriage, the Respondent had treated her with cruelty. She stated that the Respondent had also neglected his duties as a husband by failing to provide her basic needs. She accused the Respondent of deserting their matrimonial home shortly after celebration of the marriage. She further accused him of denying her conjugal rights thereby causing her to suffer loneliness. For the above reasons, the Petitioner is of the view that 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 restraining the Respondent from interfering with her life.

The Respondent was served with the petition for divorce. He entered appearance through his advocates but did not file any papers in opposition to the petition for divorce. The Deputy Registrar of this court issued a certificate certifying this cause as suitable to be heard as an undefended divorce cause. The Petitioner testified during the hearing of the divorce cause. She basically reiterated the contents of her petition for divorce. She stated that after the marriage she went back to reside with her mother as she waited for the Respondent to come and pay dowry. She testified that the Respondent never showed up and that his whereabouts were unknown to her. It was her testimony that the marriage was not consummated.

This court was satisfied from the evidence adduced by the Petitioner that indeed her marriage to the Respondent had irretrievably broken down with no possibility of salvage. It was clear from the testimony of the Petitioner that the Respondent is no longer interested in the marriage. A marriage which has not been consummated three (3) years after its celebration cannot be said to be a marriage worth sustaining. This court is of the opinion that the Petitioner has made a case, which proved to the required standard of proof on a balance of probabilities, the matrimonial offences of cruelty and desertion.

In the premises therefore, the marriage between the Petitioner and the Respondent which was solemnized on 9<sup>th</sup> January 2010 at the Registrar's Office 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. This court shall not issue the restraining order sought by the Petitioner against the Respondent given that the Petitioner has not demonstrated that there was any interference by the Respondent. There shall be no orders as to costs. It is so ordered.

**DATED AT NAIROBI THIS 22<sup>ND</sup> DAY OF NOVEMBER, 2013**

**L. KIMARU**

**JUDGE**