



**B.M.K ..... PETITIONER**

**VERSUS**

**T.K.K. alias D.K.K ..... RESPONDENT**

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

The petitioner B.M.K., filed a petition for dissolution of marriage on 9<sup>th</sup> December 2008. She alleged cruelty and desertion against the respondent. Particulars of cruelty, desertion and particulars of adultery were given in the plaint. She asked for the following orders:-

- (a) The marriage between the petitioner and the respondent be dissolved.**
- (b) The petitioner be granted custody of the children.**
- (c) The respondent do bear the cost of the petition.**

The petition was served. The respondent filed a replying affidavit and an answer to petition and cross-petition. The respondent claimed that the petitioner was cruel and deserted him. Particulars were given.

Both the petitioner and the respondent, in the documents filed, stated that the marriage had broken down irretrievably, and therefore they wanted the marriage dissolved.

On the hearing date, only the petitioner testified. She gave her side of the story. She also stated that there were two children of the marriage. That marriage was celebrated in 1998 under the Marriage Act Cap 150. That the respondent was currently living with another woman, since 2005, and had another child in that union.

Since the respondent has not tendered any evidence, the version of the petitioner is uncontroverted. The pleadings or assertion of the respondent in documents he filed are mere allegations. Evidence has to be tendered to support them. In the absence of actual evidence, I will not give them weight.

From the evidence on record, I find that the petitioner has proved her allegations. I also find that the marriage has broken down irretrievably. The parties have been living apart for a number of years now, from about 2005. I will therefore, dissolve the marriage. I also find that the petitioner has been living with the two children and will therefore grant her custody. Since the respondent did not bother to come to court to testify, I will order that each party bears their respective costs of the proceedings.

Consequently, I allow the petition and order as follows:-

- 1. The marriage between the petitioner and the respondent herein is dissolved. A decree nisi for divorce to issue, and same to be made absolute after six (6) months.**
- 2. The petitioner is granted custody of the two children.**

**3. Each party will bear their respective costs of the proceedings.**

It is so ordered.

Dated and delivered at Machakos this **28<sup>th</sup>** day of **June** 2012.

**George Dulu**  
**Judge**

**In presence of:-**  
Nyalo – Court clerk  
N/A for parties