



REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Divorce Cause 68 of 2009

L. W. N.....PETITIONER

VERSUS

H. N. M.....RESPONDENT

JUDGMENT

The Petition for divorce in this matter was dated 28th April, 2009 and filed in court the following day. The petitioner prays from the court orders that-

- 1. This honourable court do decree that dissolution of the marriage herein**
- 2. The custody, care and control of the children of the marriage be granted to the petitioner**
- 3. Any other relief that this honourable court may deem fit and just to grant.**

In response to the Petition, the Respondent filed an answer and Cross Petition in which he accused the Petitioner of cruelty and adultery. By a letter dated 13th March, 2012, the Petitioner's Advocates invited the Respondent's Advocates to meet at the Registry on 19th March, 2012 for fixing hearing date. As the Respondent's Advocates failed to attend, the Petitioner's Advocates took the hearing date *ex parte*. The Respondents Advocates were duly served with a copy of the hearing notice which they received on 29th March, 2012. However, they did not attend court on the hearing date, and the hearing of the matter proceeded *ex parte*.

In her sworn testimony, the Petitioner told the court that the parties married on 20th December, 2001. She produced a copy of the marriage certificate as her exhibit No. 1. It was her further testimony that the marriage was blessed with three issues, but the couple ceased cohabiting in 2008, and the Petitioner has been living with the children all along. She also testified that before filing this Petition, she had undergone untold mental and physical torture at the hands of the Respondent. He used to batter her physically and abuse her verbally. She reported one of these incidents to the police and produced a copy of a P3 Form. It shows that the head and neck were tender on the left forehead and behind the left ear. She had haematoma of the left arm and also haematoma above the right knee. The doctor classified the injuries as "**harm**".

Concluding her testimony, the petitioner said that there was absolutely no possibility of salvaging the marriage. She therefore sought from the court a divorce and full custody of the children.

As observed earlier, the Respondent did not attend court on the hearing date despite having been

served in time to do so. His answer to the Petition by the Petitioner and his Cross Petition are hereby dismissed for non attendance.

Coming back to the case for the Petitioner, her evidence is not controverted in any way. On that basis, I find that this marriage is irretrievably broken down and these two can no longer be expected to live together as husband and wife. In the circumstances, I make the following orders-

- 1. The marriage solemnized at the Registrar's Office, Nairobi on 20th December, 2001 between the Petitioner and the Respondent herein be and is hereby dissolved.**
- 2. Decree nisi to issue.**
- 3. Decree nisi to be made absolute on application by either of the parties within sixty (60) days.**
- 4. The custody, care and control of the children of the marriage is hereby granted to the Petitioner.**
- 5. Each party to bear its own costs.**

DATED and DELIVERED at NAIROBI this 31st say of July, 2012.

L. NJAGI
JUDGE