



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI**  
**DIVORCE CAUSE NO.86 OF 2007**

**G.M.....PETITIONER**

**VERSUS**

**M.M.....RESPONDENT**

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

The petitioner and the respondent were married at the Holy [.....] on 27<sup>th</sup> November 1992. According to the petitioner, soon after the said marriage, the petitioner and the respondent cohabited together as husband and wife in various estates within the city of Nairobi. The marriage was blessed with one child. The petitioner works as an Engineer and is resident in Nairobi, Kenya. The respondent is currently resident in the United States of America. The petitioner petitioned this court to be granted divorce citing the matrimonial offences of cruelty, desertion and adultery. According to the petitioner, during the subsistence of the marriage, the respondent frequently disappeared for extended periods of time from the matrimonial home without any explanation. The frequent absence of the respondent from the matrimonial home led to the separation of the petitioner and the respondent in the year 2002. The petitioner averred that the respondent migrated to the United States of America in August 2006. Since then, the respondent had not returned back to the country. The petitioner was of the view that the respondent had abandoned the marriage. The petitioner accused the respondent of committing adultery with several men whom he particularized in his petition for divorce. It is for the above reasons that the petitioner formed the view that his marriage to the respondent had irretrievably broken down with no chance of salvage. The petitioner asked the court to grant his petition for divorce. The petitioner further prayed to be granted custody of the child of the marriage.

The respondent was served with a copy of the petition and summons to enter appearance. The respondent neither entered appearance nor filed an answer to the petition. The Deputy Registrar of this court was satisfied that the respondent was duly served. She issued a certificate to the effect that the hearing of this cause may proceed to hearing as undefended cause. This court was satisfied that the respondent was duly served and therefore heard the petition, the absence of the respondent notwithstanding. In his testimony before court, the petitioner essentially reiterated the contents of his petition for divorce. This court has carefully considered the said evidence. It was clear to this court that the marriage between the petitioner and the respondent has indeed irretrievably broken down with no chance of reconciliation. This is because the petitioner and the respondent have practically been separated for more than ten (10) years. The respondent no longer lives in the country. According to the petitioner, the respondent deserted from the matrimonial home abandoning him with the child of the marriage. Prior to the respondent deserting the matrimonial home, she engaged in several adulterous liaisons which the petitioner particularized in the petition for divorce. This evidence was not controverted. This court therefore holds that the petitioner has established, to the required standard of proof on a balance of probabilities, the grounds of divorce of cruelty, desertion and adultery.

In the premises therefore, the marriage celebrated between the petitioner and the respondent on 27<sup>th</sup> November 1992 is hereby dissolved. Decree nisi dissolving the said marriage is hereby issued. The said decree nisi shall be made absolute thirty (30) days from the date of this judgment. This court will not issue the order craved for by the petitioner seeking the grant of custody of the child of marriage. This is because the said issue is over the age of eighteen (18) years and is no longer considered a child. There

shall be no orders as to costs.

**DATED AT NAIROBI THIS 11<sup>TH</sup> DAY OF MARCH, 2011**

**L. KIMARU**  
**JUDGE**