



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MOMBASA**  
**DIVORCE CAUSE NO. 48 OF 2010**

**E.I.N..... PETITIONER**

**=VERSUS=**

**P.T.H..... RESPONDENT**

**JUDGEMENT**

This is the Petition dated 29<sup>th</sup> October 2010 filed by one **E.I.N** (hereinafter referred to as '**the Petitioner**') in which she seeks the following orders:

***“(a) THAT the said marriage between the Petitioner and the Respondent be dissolved and Petitioner be separated from the Respondent forthwith***

***(b) The costs of this cause be borne by the Respondent***

***(c) Any other relief this honourable court may deem fit and just to grant to the Petitioner”***

The Respondent **P.T.H** was with the leave of court served by way of substituted service but did not file any papers in reply to the petition. The matter therefore proceeded as an undefended cause.

In her evidence the Petitioner told the court that she met and married the Respondent on 23<sup>rd</sup> January 2009 at the Registrar's office in Mombasa. She produces their Marriage Certificate serial number [.....] as an exhibit **Pexb1**. The couple lived together as man and wife for exactly one week before the Respondent left to go back to his native country Germany. He did not return until January 2010. Again the couple cohabited for one week after which they parted ways due to disagreements and the Respondent moved to stay in a hotel in Mtwapa. He then went back to Germany and has not returned to date.

This marriage was conducted in January 2009. The petition for divorce was filed in May 2010 hardly one year after the marriage. S. 6(1) of the Matrimonial Causes Act provides that no petition for divorce shall be filed unless three (3) years have elapsed since the date of the marriage. However the Petitioner did apply for and obtained leave from the High Court to file her petition **before** the expiry of three (3) years. This was vide orders of the court dated 18<sup>th</sup> October 2010. As such I am satisfied that this present divorce petition is properly before the court.

The Petitioner tells the court that after her marriage to the Respondent the two only cohabited for a period of one week. The Respondent thereafter returned to Germany. The same occurred in January 2010 – the couple only cohabited for one week then the Respondent left to Germany. The Petitioner's evidence

has not been challenged by any other evidence and therefore remains uncontroverted. As it is, the couple though married, have only cohabited for two weeks out of a two year period. This is simply unacceptable. It was the duty of the Respondent as the husband to provide a home where the couple could live together. For him to constantly take off to his native land leaving the Petitioner behind in my view amounts to cruelty. The only conclusion that can be drawn is that the Respondent actually had no intention to live with the Petitioner. Otherwise, why did he not take her with him to Germany as his wife? Such a situation amounts to a '*temporary marriage*' and it is not what is envisaged in the law. Spouses are required to live together and build a home together. The Petitioner told the court that she and the Respondent have not been in communication since he left in January 2010 to go to Germany – almost 1½ years ago. It is clear that this union has broken down. The Petitioner should not be forced to remain in such an empty marriage. I am satisfied that the ground of cruelty has been proved. I do hereby allow this petition for divorce. Decree nisi to issue to be made absolute within three (3) months of todays date.

**Dated and Delivered in Mombasa this 20<sup>th</sup> day of June 2011.**

**M. ODERO**  
**JUDGE**

In the presence of:  
Mrs. Kipsang for Petitioner