



**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**DIVORCE CASE NO. 45 OF 2009**

**C.M.N.....PETITIONER**

**Versus**

**K.J.D.N.....RESPONDENT**

**JUDGMENT**

This is a divorce petition. The parties married in July 1997 at All Saints Cathedral in Nairobi. Thereafter they lived and cohabited in a house on J[...] Road, L, Nairobi. They were blessed with two children, A.F.N.N born in June 1998 and E.E.M.N born in August 1999.

The Petitioner avers in his petition that throughout their marriage the Respondent has been extremely cruel to him and displayed utter contempt for him and his family members making it extremely difficult for them to communicate. While on a family holiday in Mombasa in December 2002, the Respondent harangued the Petitioner and demanded that on their return to Nairobi the Petitioner should vacate their matrimonial home. To avoid ugly scenes and for the sake of the children of the marriage the Petitioner vacated the matrimonial home in January 2003. Thereafter the Respondent filed Separation Cause No.[...] of 2003 and obtained an order committing the children of the marriage to the custody of both of them with care and control being given to the Respondent. The Petitioner was ordered to pay a greater proportion of the Respondent and the children's maintenance.

Upon being served the Respondent filed an answer to petition and cross petitioned for divorce but she later withdrew that cross-petition paving the way for the Petitioner to formally prove his petition.

At the hearing the Petitioner reiterated the averments in his petition and added that right from inception the Respondent has had no respect for him or his family. After a quarrel in Mombasa in December 2002 he was, for the sake of their children, forced to accede to the Respondent's repeated demands and vacated the matrimonial home. They have since not resumed cohabitation. In the circumstances he prays for divorce. He said he has been shouldering the bulk of the Respondent's and the children's maintenance and he will continue doing so.

I have considered the matter. As stated the Respondent withdrew her cross-petition and at the hearing she did not appear in court or tender any evidence in opposition to the petition. The Petitioner's evidence therefore stands uncontroverted. Having considered it, and in particular the fact that the parties have been separated since January 2003, I am satisfied that the marriage between them has irretrievably broken down. In the circumstances I grant this petition and hereby dissolve the marriage between the Petitioner and the Respondent. A decree nisi shall issue forthwith to be absolute after 30 days. The Petitioner having not sought costs which I would in any case have been reluctant to award I order that each party bears its own costs.

**DATED and delivered this 15<sup>th</sup> day of July, 2011.**

**D.K. MARAGA**

**JUDGE**