



REPUBLIC OF KENYA.

IN THE HIGH COURT OF KENYA

AT KITALE.

DIVORCE CASE NO. 11 OF 2007.

**IN THE MATTER OF THE AFRICN CHRISTIAN MARRIAGE AND DIVORCE ACT CAP 151
OF THE LAWS OF KENYA**

BETWEEN

R.W.K.....PETITIONER.

VERSUS

P.N.W.....RESPONDENT.

J U D G M E N T.

1. R.W.K, the petitioner herein petitioned for the dissolution of the marriage solemnized on 15th January, 2000 with P.N.W, the respondent herein. The marriage was solemnized at St. Paul's Kitale. Before the solemnization, the parties were married under the customary law. After marriage the parties cohabited as husband and wife in Kitale. There are two children of the said marriage P.W.N. born on 30th October, 1997 and E.K.N. born on 28th December, 2001. The petitioner complained of cruelty on the part of the respondent as per the particulars of cruelty stated in the petition. The petitioner thus sought for the dissolution of the marriage, the custody of the two issues of the marriage and costs of the suit. The respondent filed an answer. He denied the particulars of cruelty and on his part claimed that the petitioner deserted the matrimonial home on 2nd July, 2002 and went to live with her parents and eventually moved to Bungoma in order to avoid the respondent. According to the answer by the respondent, the marriage is not irretrievably broken down because no reconciliation has been done. This cause was certified as a defended cause. However, the respondent did not attend court during the hearing although he was duly served with the hearing notice as per the affidavit of service sworn on 3rd May, 2011. The petitioner gave evidence in support of her evidence and narrated how the respondent assaulted her especially the month of February and March, 2002. The respondent also neglected to provide for the family and left the entire responsibility of providing to the two children of the marriage to the petitioner. The respondent also became a habitual drunkard and the cruelty was also extended to the children. In one incident, the respondent poured cold water onto the child who was crying. This caused agony to the petitioner. Since 2nd July, 2002, the petitioner was forced to separate from the respondent due to the acts of cruelty and neglect.

2. Although the respondent filed an answer to this petition, he did not attend court to give evidence in

support of the answer thus the petitioner's evidence was not controverted. The petitioner was able to prove that she was subjected to acts of cruelty and neglect in the cause of the marriage and she did not condone that cruelty. I am satisfied that this petition was not filed through collusion. Further the parties separated in July, 2002 which is 8 years ago and the parties have not cohabited since. Accordingly, the petitioner proved the allegations of cruelty and desertion. The petitioner is entitled to the orders sought in the petition. The petitioner has always had the custody of the children of the marriage. She should continue to have the same rights after all the respondent has not supported the children or even cared to know their well being.

3. I hereby issue an order dissolving the marriage, a decree nisi shall issue for a period of three (3) months. If no application is made after three months this decree shall be made absolute. The petitioner shall have the custody of the child of the marriage and the costs of this petition.

Judgment read and signed this 15th day of July, 2011.

MARTHA KOOME.

JUDGE.