



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KITALE**

Divorce Cause 6 of 2009
M.N.M.....PETITIONER.
VERSUS
R.M.M.....RESPONDENT.

J U D G M E N T.

By a petition dated 27th October, 2009, the petitioner herein M. N.M sought orders for:-

- (a) dissolution of the marriage between the petitioner and the respondent.
- (b) The custody of the three (3) issues of the marriage.
- (c) Costs of this cause.
- (d) Interest.

The petition was served upon the respondent on 29th day of January, 2010 who was enjoined by summons to Enter Appearance within 8 days of service. He duly entered appearance on 5th February, 2010 but failed to file answer to petition within the time prescribed by law.

Subsequently the petitioner sought judgment by a request thereof dated 16th April, 2010.

On the 22nd day of April, 2010 the petitioner filed Notice of Motion pursuant to rule 29 of the Matrimonial Causes Act seeking for a certificate that all the documents filed are in order and that the suit should be fixed for hearing.

The said application was heard on 29th March, 2010 and certificate of compliance duly issued.

At the hearing the petitioner testified that the marriage to the respondent was solemnized at the D.C.'s office at Lodwar on 3rd October, 1991. As evidence thereof the petitioner tendered a certified copy of certificate of marriage as Exhibit P1.

The couple thereafter were domiciled at various places namely, Lodwar and Naru Moro all within the Republic of Kenya.

The union was blessed by three (3) issues namely:-

- (i) A.W - born in 1987. – 22 years old.
- (ii) P.M - born in 1991 – 18 years old.
- (iii) M.W - born in 1997 - 12 years old.

The couple thereafter lived peacefully and happily until 1999 when the respondent eloped with a house-help by the name N who has since then became his “second wife”.

Upon “marrying” N the respondent deserted the matrimonial home and subsequently refrained from giving the petitioner conjugal rights as enjoined by law and practice thereby subjecting her *interalia* to mental anguish. The petitioner contends that alone constitutes cruelty in addition to the desertion and adultery as afore-cited.

In the premises, the petitioner sought for dissolution of the marriage and the other reliefs as afore-itemized.

I have carefully analysed the pleadings herein, and married the law to the evidence on record. Having done so, and in the absence of evidence from the respondent in rebuttal, I find as a fact that the petitioner has proved adultery, cruelty and desertion, which are good grounds for dissolution of a marriage.

Accordingly, there shall be judgment for the plaintiffs against the defendant for:

- (a) a dissolution of the marriage.
- (b) Custody of the three issues of the marriage itemized in the plaint.
- (c) Costs of this petition.
- (d) Interest at court rates.

It is so ordered.

Dated and delivered at Kitale this 28th day of June, 2010.

N.R.O. OMBIJA.

JUDGE.

Petitioner present.

Respondent absent.