



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT KISII**  
**DIVORCE CAUSE NO. 1 OF 2005**

**W.K. T..... PETITIONER/APPLICANT**  
**VERSUS**

**E.C.K..... RESPONDENT**

**JUDGMENT**

This petition is unopposed. On 23<sup>rd</sup> June, 1996 the petitioner and the respondent contracted a marriage under the **African Christian Marriage and Divorce Act Cap 151** of the laws of Kenya. Thereafter they were blessed with three daughters namely **R.M** who was born in 2001, **R.N** born in 1999 and **R.R** born in 1997. The petitioner was working at St. Joseph's Mission Hospital and the respondent was a business woman.

The petitioner alleged that since celebration of the marriage, the respondent had subjected him to persistent acts of cruelty. The particulars of cruelty that were pleaded included failing to treat him with respect, failing to demonstrate any love towards the respondent, failing to take care of their children and matrimonial properties, engaging in family planning without the petitioner's knowledge and spitting on the petitioner's face.

The petitioner further alleged that in 2004 the respondent deserted the matrimonial home and went to live with her parents at Nakuru. She went with R.R and R.N and left the respondent with their first born. The church tried to reconcile them without any success.

The petitioner prayed for dissolution of the marriage and custody of the three children.

In view of the fact that this petition is not opposed, I accept the petitioner's evidence as true. It appears that the marriage between the petitioner and the respondent has broken down irretrievably. The two have been living apart since the year 2004. Consequently, I dissolve the marriage and direct that a decree *nisi* do issue forthwith.

As regards custody of the children, I note that they are all girls of tender age. The second and third born are currently living with the mother. They are aged 11 and 9 years respectively. The first born who is living with the petitioner is currently aged about 13 years.

Ordinarily, custody of children of tender age ought to be given to the mother. There is no good reason why the petitioner ought to be given custody of the children. I give custody of the three children to the respondent until they attain the age of 18 years. The petitioner shall however be at liberty to visit his children at convenient times but with prior arrangements with the respondent. In the event that the respondent will not go for the remaining child, the petitioner shall continue to stay with her. I make no order as to costs.

**DATED, SIGNED AND DELIVERED AT KISII THIS 29<sup>TH</sup> DAY OF JULY, 2010.**

**D. MUSINGA**  
**JUDGE.**

**29/7/2010**

Before D. Musinga, J.

Mobisa – cc

Mr. Kisera for Mr. Sagwe for the Petitioner

N/A for the Respondent

**Court:** Judgment delivered in open court on 29<sup>th</sup> July, 2010.

**D. MUSINGA**  
**JUDGE.**