



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**DIVORCE CAUSE NO.102 OF 2009**

**D. L. E.O.....PETITIONER**

**VERSUS**

**K.A.A.....RESPONDENT**

**J U D G M E N T**

The petitioner and the respondent were on 6<sup>th</sup> January 2006 married at the Registrar's office Nairobi under the **Marriage Act**. The petitioner and the respondent cohabited together as husband and wife for short periods of time at their matrimonial home at Buruburu phase II Nairobi. They were not blessed with any children. According to the petitioner, the respondent had treated him with cruelty since the celebration of the said marriage. In particular, the petitioner complained that the respondent had unilaterally and without any reason denied him his conjugal rights and consortium. He averred that the respondent deserted from the matrimonial home in July 2007 and permanently re-located to the United Kingdom. He stated that the respondent had refused to participate in any family business ventures thereby frustrating his intention to build a lasting relationship with the respondent. It is the petitioner's case that since the respondent, a British citizen, re-located to the United Kingdom in 2007, she had not returned to Kenya. It is for the above reasons that the petitioner is of the view that his marriage to the respondent had irretrievably broken down with no possibility of salvage. The petitioner therefore urged the court to annul the marriage.

When the respondent was served with the petition for divorce, she filed an answer to the petition and cross-petitioned for divorce. She denied the allegations made by the petitioner in the petition for divorce that she had treated him with cruelty. She averred that the petitioner was being economical with the truth in that the reason why the respondent ceased cohabitation with the petitioner was because the petitioner was living with a woman known as D. D. G in an adulterous relationship that has resulted in the birth of a child known as K. E. G. The respondent cross-petitioned for divorce on the ground of adultery. The respondent averred that she re-located to the United Kingdom when it became apparent that the petitioner was unwilling to move out of his parents' house and start his own life. The respondent further stated that the petitioner had during the subsistence of the marriage been irresponsible and failed to take up his marital responsibilities by providing for the respondent and their child. She urged the court to grant the petition for divorce and order the petitioner to pay her alimony and maintenance.

At the hearing of the petition, the respondent failed to attend court. This court directed the hearing of the case to proceed in the absence of the respondent notwithstanding. The petitioner reiterated the contents of his petition in his testimony. This court has carefully considered the said evidence. It was clear to the court that the petitioner and the respondent's marriage has irretrievably broken down and cannot be salvaged. This is because the petitioner and the respondent have been separated for more than three (3) years. The respondent has been re-located to the United Kingdom, where she is currently residing. The respondent is a British citizen. From the pleadings filed in court, it was clear that the relationship between the petitioner and the respondent had, by the time of separation, deteriorated to the extent that the possibility that the respondent would return to Kenya to live with the petitioner is remote. The hallmark of any successful marriage is the willingness of the concerned couple to live together. In the present case, it is evident that the petitioner and the respondent will never again live together in one country.

In the premises therefore, I will allow the petition for divorce. The marriage solemnized between the petitioner and the respondent on 6<sup>th</sup> January 2006 at the Registrar's office in Nairobi is hereby annulled. Decree nisi is hereby issued dissolving the said marriage. Decree nisi shall be made absolute thirty (30) days from the date of this judgment. There shall be no orders as to costs.

**DATED AT NAIROBI THIS 17<sup>TH</sup> DAY OF NOVEMBER, 2010**

**L. KIMARU**  
**JUDGE**