



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAKURU**

**Divorce Cause 15 of 2008**

**IMJ.....PETITIONER**

**VERSUS**

**MKI.....RESPONDENT**

**JUDGMENT**

The petitioner was married to the respondent on 29<sup>th</sup> January 1993 at a marriage ceremony solemnized at the Registrar's Office, Nakuru under the **Marriage Act, 150** of the **Laws of Kenya**. After the marriage, the petitioner cohabited with the respondent at R[particulars withheld]estate Nakuru. Their marriage was blessed with two issues namely AMM, *born in 1993* and KMM, *born in 1995*. The petitioner complains that the respondent deserted the matrimonial home without any justifiable cause in September 2008. Since the respondent deserted the petitioner and the children, she has not informed the petitioner her whereabouts.

This is not the first time the respondent has deserted the matrimonial home, on previous occasion, the petitioner complained that the respondent deserted the matrimonial home in 1993, in 2002 and in the year 2005 when she left the matrimonial home for a periods of up to periods of 2<sup>1/2</sup> months. The petitioner also complained of cruelty by the respondent who mistreated his relatives.

The petitioner also alleged that the respondent was communicating with other parties by exchanging photographs. He was able to get this communication from the respondent's email which contained intimate messages. Due to this matrimonial disharmony the petitioner testified that the marriage between him and the respondent had broken down irretrievably and he prayed the same be dissolved.

This petition was not defended. The petitioner was issued with a Registrar's certificate that the Divorce Cause be heard as an undefended cause. During the hearing the petitioner adduced evidence in support of the petition. He confirmed that the marriage is irretrievably broken down and this petition was not filed through collusion nor did the petitioner condone the acts of cruelty perpetuated by the respondent against him. The petitioner has been having the custody of the children of the marriage. He also sought to be awarded their custody.

Upon examination of the pleadings by the petitioner, the evidence adduced before this court and the documents produced in support of the petition, the petitioner has proved that the marriage between him and the respondent is broken down and the petitioner has not colluded or condoned the said cruelty by the respondent.

Accordingly the petition is allowed and the order dissolving the marriage solemnized between the petitioner and respondent is hereby issued. The decree nisi shall issue and remain in force for a period of three (3) months after which, if no application is made, it shall be made absolute. The petitioner shall also have the custody of the two children. Since the petition was not defended the petitioner shall bear his own costs of this petition. It is so ordered.

**Judgment read and signed on 27<sup>th</sup> day of March 2009**

**M. KOOME**

**JUDGE**