



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI (MILIMANI LAW COURTS)**  
**DIVORCE CAUSE 93 OF 2008**

**HP..... PETITIONER**

**VERSUS**

**SHD..... RESPONDENT**

**JUDGMENT**

This petition was duly certified as an undefended cause. Despite notice of hearing duly served, the Respondent did not appear before the court.

The Petitioner testified and stated in short that prior to the marriage the Respondent was involved in relationships with two men but those affairs were not disclosed to him prior to the marriage which was solemnized as per Hindu rites at Mombasa on 2<sup>nd</sup> February, 1991.

After the marriage, they cohabited initially at a premises situate along[ *Particulars Withheld*] Avenue upto 9<sup>th</sup> August, 1997 and thereafter on their family farm at [ *Particulars Withheld*].

They have three female issues of the marriage namely

- (1) DHD born on 5.8.93.
- (2) KHD born on 30.10.95
- (3) BHD born on 27.4.97.

The Respondent, behind back of the Petitioner, continued indulging with extra marital affairs. He cited two affairs: one in December, 1997 with one Mr. SS and the second in October, 2006 with one RMP.

The Respondent was, on 17<sup>th</sup> October 2006, caught in act with the said RP by his brother RPD (PW.2). According to the evidence of PW.2, which corroborated the evidence of the Petitioner, on the said date he was called by watchman of the farm that the Respondent had brought a man in the farm. The farm has four offices and he drove to where the watchman was waiting. He found the Respondent's car parked outside the office. When he knocked, nobody responded. He then went around and saw through a window the Respondent and the said Mr. P in compromising situation. When he knocked at the window, they had to open the door. The Petitioner was in Mombasa on the said date i.e. 17<sup>th</sup> October, 2006.

Thereafter, a family meeting was called wherein the Respondent's brother RRP was present. The Petitioner, his brother (PW.2) and father as well as the Respondent were also in the meeting.

A minute of the meeting was recorded, signed and witnessed by the parties and their respective brothers on 31<sup>st</sup> October, 2006 (P.Ex.2). The Respondent had accepted therein that she has committed acts of adultery during marriage.

Since that time, the Respondent has left the matrimonial home leaving the three children of marriage which are maintained and cared for by the Petitioner. They all are minor as at this date and the Petitioner has prayed that custody, care and control of the three daughters be granted to him besides the order of dissolution of marriage.

The facts are self-explanatory and are not controverted. The agony and embarrassment were visible on the face of the Petitioner while giving evidence and I do accept his evidence as credible and find that the marriage, due to those acts of adultery by the Respondent, has been irretrievably broken down.

The Petitioner has not condoned or been accessory to the acts of adultery and has not presented or prosecuted the petition in collusion with the Respondent.

I thus grant decree nisi of dissolution of the marriage solemnized on 2<sup>nd</sup> February, 1991 which decree is directed to be made absolute within 60 days from the date hereof.

I do not make any order on costs as none was asked for.

Dated and signed at Nairobi this 4<sup>th</sup> day of June, 09.

**K.H. RAWAL**

**JUDGE**

**4.6.09**