**REPUBLIC OF KENYA**
**IN THE HIGH COURT OF KENYA AT NAIROBI**
**(FAMILY DIVISION)**

**Divorce Cause 88 of 2004**
**IN THE MATTER OF THE MARRIAGE ACT CAP 150 AND IN THE MATTER OF THE MATRIMONIAL CAUSES ACT CAP 152 LAWS OF KENYA**

**J C D……PETITIONER/APPLICANT**

**VERSUS**

**S K D……..…….RESPONDENT**

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

The Petitioner in this divorce cause JCD sought for an order of dissolution of the marriage that was solemnized on the 16th day of January 2001 between her and LSKD at the office of the Registrar of Marriages Sheria House.

Upon marriage the parties cohabited at [Particulars Withheld] Estate Langata but only for a short time as the Petitioner was forced to separate and seek refuge at her parents home in July 2002.

There is one issue of the marriage namely J K D born on 2nd February 2001 although the Respondent accepted another issue namely J C D who was born out of wedlock a their child of the marriage. Both parties are domiciled in the Republic of Kenya. The Petitioner is a teacher by profession while the Respondent employed by Air Kenya Aviation Limited. This Petition was defended, the Respondent duly filed an answer to the Petitioner and cross-Petitioned for divorce.

However, during the hearing the Respondent tendered no evidence although he was represented by counsel.

The Petitioner gave evidence during the hearing and reiterated the particulars of cruelty, negligence and abandonment by the Respondent that characterized their short relationship.

According to the Petitioner, the marriage is irretrievably broken down and there is no likelihood of reconciliation since the Petitioner was forced by circumstances to move out of the matrimonial home in July 2002, there has been no cohabitation for a period of almost 3 years. The Petitioner has had the custody care and control of the two minor children and the Respondent has been having access and paying school fees.

I have carefully considered the petitioner's evidence as well as the pleadings filed herein. In the absence of any evidence to controvert the Petitioner's evidence I am fully satisfied that the Petitioner has proved her case to the required standard and that this petition was not presented or prosecuted in collusion with the Respondent.

Accordingly, I hereby pronounce the decree of divorce and dissolve the marriage that was solemnized on

16th Jeanery 2001.

The decree nisi shall remain in force for a period of 3 months. The Petitioner shall have the custody of the two minor children.

The Respondent shall be entitled to access of the children during the next school holidays, weekends and after school hours the details to be worked out by both parties.

The Respondent shall pay Kshs. 30,000/- per year towards the school fees for the children until they attain the age of majority. The said sum shall be reviewed after every two years.

In addition the Respondent shall pay to the Petitioner a sum of Kshs. 10,000/- per month with effect from August 2005 being towards maintenance. This sum is subject to review every year.

The Respondent will continue paying for the Health Insurance Policy for both children until they attain the age of majority.

Parties shall be at liberty to apply in regard to the welfare of the children. Each party to bear their own cost.

It is so ordered.

Judgment read and signed on 23/9/05

**MARTHA KOOME**

**JUDGE**