



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**DIVORCE CAUSE NO 128 OF 1999**

**M.G.S.....PETITIONER**

**VERSUS**

**P.A.O.S.....RESPONDENT**

**JUDGMENT**

This is a petition brought by **M.G.S** seeking, inter-alia, dissolution of his marriage to **P.A.O.S** the named Respondent therein.

On 26th May 1988 the said Petitioner solemnized a statutory marriage with the Respondent pursuant to the provisions of the Marriage Act(Cap 150) at the Office of the Registrar of Marriages in Nairobi. Prior to the said marriage the Petitioner and the Respondent lived and cohabited under customary law as man and wife and were blessed with four children namely O.A (27years); N.O (25 years) G.A (21 years) and T.A (17 years). The Petitioner and the Respondent established their new matrimonial home in Nairobi.

The said dissolution is sought on ground of cruelty on the part of the Respondent, particulars of which are set out in paragraph 8 of the said Petition dated 8th October 1999. Upon being served with a copy of the Petition and Notice to Appear, the Respondent entered appearance and filed an Answer by way of Cross Petition seeking for dissolution of the said marriage on grounds of adultery, cruelty and desertion on part of the Petitioner. The hearing of both the Petition and the Cross Petition came on 18th December 2003.

I have carefully considered the evidence of both the Petitioner and the Respondent. I have further inquired into the pleaded grounds of divorce viz cruelty, desertion and adultery as respectively pleaded by the said parties. I am satisfied that the Petitioner without any reasonable cause deserted the matrimonial home of the Respondent and by extension the Respondent. Thus, I am satisfied that the marriage of the Petitioner to the Respondent has irretrievably broken down on the said ground of desertion on the part of the Petitioner as pleaded in the Cross Petition. I however make no finding on the respective grounds of adultery and cruelty, for want of adequate collaborative evidence.

I am satisfied that there has not been any connivance or condonation on the part of the Respondent and further that no collusion exists between the Petitioner and the Respondent. Finally, I am also satisfied that the petition and the cross petition have not been presented or prosecuted in collusion and further that there has not been unreasonable delay in presenting or prosecuting the said petition and cross petition.

In the circumstances aforesaid, I am satisfied on the basis of the evidence adduced that the case for the Respondent has been proved upon the said ground of desertion. I hereby therefore pronounce a decree of divorce and order that the marriage between the Petitioner and the Respondent be and is hereby dissolved. A decree nisi shall henceforth issue, the same to be confirmed as absolute upon application. By reason of age of the children of marriage I make no orders as to custody. The Petitioner is hereby ordered to pay costs of this petition suit.

**DATED** and **DELIVERED** at Nairobi this 22nd day of January 2004.

**P.J. KAMAU**

**AG. JUDGE**