



**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**DIVORCE CAUSE NO 217 OF 2002**

**PRISCILLA NYAWIRA KIBUE.....PETITIONER**

**VERSUS**

**WILFRED MICHAEL MUTURI.....RESPONDENT**

**JUDGEMENT**

On 16th November 2002 Priscilla Nyawira Kibue filed this Petition against Wilfred Michael Muturi for dissolution of their marriage solemnized on 24th November 1990.

The Petitioner's marriage to the Respondent was conducted at the Holy Family Cathedral in Nairobi under the provisions of the Marriage Act (Cap 150). A certificate of marriage number 018111 was consequent thereto issued by the presiding Marriage Officer.

Subsequently, the Petitioner and the Respondent commenced cohabitation as man and wife, and finally established their matrimonial home at Kangemi in Nairobi. They were blessed with two issues of the said marriage namely: Joseph Kibe Muturi ( born on 20th May 1991) and Consolata Wanjiru Muturi( born on 17th September 1993). The Petitioner seeks for dissolution of the said marriage to the Respondent on grounds of cruelty desertion and adultery as particularized in paragraph 7, 8 and 9 of the said Petition. Upon being served with a copy of the Petition and Notice to Appear, the Respondent entered appearance together with an answer by way of Cross Petition seeking inter alia for dissolution of the said marriage on grounds of adultery and desertion as particularized in paragraphs 9 and 10 of the said Cross Petition. The Petition and the Cross petition came for hearing on 19th February 2004 during which both the Petitioner and the Respondent were duly represented by their respective counsels. The Respondent however failed to appear in person to defend his Cross petition and with the consent of his counsel the proceedings proceeded only with the hearing of the Petition suit as filed, the said Cross Petition having been marked as abandoned.

I have carefully considered the testimony of the Petitioner in support of her petition suit. I have also scrutinized and inquired into the alleged grounds of divorce as contained in the Petition suit, and have heard the submissions of both the counsel for the Petitioner and the counsel for the Respondent. I am satisfied that the Respondent has during the subsistence and cohabitation of the said marriage been persistently cruel to the Petitioner on the basis of the uncontroverted evidence of the Petitioner and stated conduct of the Respondent as outlined in paragraph 7 of the said Petition, and which conduct led to the Petitioner deserting her matrimonial home. I therefore find the said Respondent guilty of constructive desertion. I am thus further satisfied that the said marriage of the Petitioner to the Respondent has on the basis of evidence and testimony of the Petitioner irretrievably broken down on the grounds of cruelty and constructive desertion of the Respondent to the Petitioner as particularly more pleaded in the said Petition. I am unable to make any finding on respect of the other pleaded ground of divorce for want of adequate evidence.

I am satisfied that there has not been any connivance or condonation on the part of the Petitioner and further that no collusion exists between the Petitioner and the Respondent. Lastly, I am satisfied that the Petition has not been presented or prosecuted in collusion with the Respondent and further that there has not been unreasonable delay in presenting or prosecuting the Petition.

I am satisfied on the basis of the evidence adduced that the case for the Petitioner has been proved beyond reasonable doubts in accordance with the standard laid out in the case of Mathaai –v- Mathaai (19. 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 made absolute upon application. I make no orders as to maintenance and custody the same having been settled else but order the Respondent to meet the costs of this suit.

It is so ordered.

**DATED DELIVERED and SIGNED at Nairobi this 4th day of March, 2004.**

**P. J. KAMAU**

**AG. JUDGE**