



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MOMBASA**

**FAMILY DIVISION**

**DIVORCE CAUSE NO. 73 OF 2015**

**R W M.....PETITIONER**

**VERSUS**

**A B P.....RESPONDENT**

**JUDGMENT**

1. R W M the Petitioner and A B P the Respondent began cohabiting in 1994. On 26.1.02, their union was solemnized at the Association of Jehovah's Witnesses, Kingdom Hall in Langata, Nairobi. The marriage was blessed with 3 children who in 2015 were aged 21 years, 17 years and 14 years respectively. The parties lived together as husband and wife until 2005 when they separated.

2. The Petitioner has filed this Petition dated 14.12.15 seeking dissolution of the marriage. She claims that since the celebration of the marriage the Respondent has treated her with cruelty. She accused the Respondent of subjecting her to constant physical assault and verbal abuse. And further denied her of conjugal rights. The Respondent deserted the matrimonial home in 2005 and has not returned since. As a result the marriage has irretrievably broken down.

3. The Respondent though served with the Petition and Notice to Appear failed to file appearance. The Registrar's certificate was issued on 19.2.19 thus paving way for the matter to proceed to hearing as an undefended cause.

4. In her testimony, the Petitioner reiterated the contents of her Petition. She further stated that the Respondent used to beat her and the children and throw them out of the house. The parties have been separated since 2005. She prayed that the marriage be dissolved.

5. Cruelty and the irretrievable breakdown of a marriage are some of the grounds upon which a Christian marriage may be dissolved. Section 65 of the Marriage Act, 2014 provides:

*(a) one or more acts of adultery committed by the other party;*

*(b) cruelty, whether mental or physical, inflicted by the other party on the petitioner or on the children, if any, of the marriage;*

*(c) desertion by either party for at least three years immediately preceding the date of presentation of the petition;*

*(d) exceptional depravity by either party;*

*(e) the irretrievable breakdown of the marriage"*

6. The Petitioner in her uncontroverted testimony stated that she suffered both physical and mental abuse at the hands of the Respondent. The Respondent then deserted the matrimonial home in 2005 and has not returned 14 years later. The marriage has therefore irretrievably broken down. In absence of evidence to the contrary, I am satisfied that the grounds of cruelty, desertion and irretrievable breakdown of the marriage have been established.

7. In the result I do pronounce a decree of divorce and order that the marriage between the Petitioner and the Respondent **solemnized** on 26.1.02 at the Association of Jehovah's Witnesses, Kingdom Hall in Langata, Nairobi be and is hereby dissolved. Decree *nisi* to issue and the same to be made absolute within 1 month. There shall be no order as to costs.

**DATED, SIGNED and DELIVERED in MOMBASA this 3<sup>rd</sup> day of May 2019**

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**M. THANDE**

**JUDGE**

**In the presence of: -**

.....**for the Petitioner**

.....**for the Respondent**

.....**Court Assistant**