



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NANYUKI**  
**DIVORCE NO. 4 OF 2016**

**S T B .....PETITIONER**

**VERSUS**

**S W W .....RESPONDENT**

**JUDGMENT**

1. **S T B** has petitioned this court seeking that his marriage to **S W W** be dissolved. They married on 20<sup>th</sup> November, 2007 under The Marriage Act Cap. 150 (now repealed). Before celebrating that marriage they had co-habited together for four years.

2. The children of the marriage are

(a) ***R W Born on 6/9/1998.***

***This child was born by S W W before their co-habitation but later accepted as a child of the marriage by S T B.***

(b) ***E U born on 10<sup>th</sup> May, 2004.***

(c) ***L A born on 9<sup>th</sup> July 2008.***

3. **S T B** stated in evidence that **S W W** began desert the matrimonial home after the celebration of their marriage. He said that **S W W** would sometimes fail to return home for weeks. During that time of her disappearance he would not know of her whereabouts or well-being. That he suspected she was having love affairs. **S W W** also began taking excessive alcohol.

4. On her return, after long periods of absence, **S T B** said that

**S W W** would be rude and violent towards him.

5. As consequence of that life style of **S W W** they separated in 2011 and have not cohabited together again since then. **S T B** was left with the children of the marriage.

6. On their separation **S T B** left **S W W** to run the family business, a small coffee shop in Nanyuki town. **S W W** however ran down that business within 2 years.

7. He said that after this petition was filed **S W W**, he believes, went out of the county. That one day **S W W** went to the family home and told the children that she was going out of the country.

8. S T B filed a children’s custody matter before the Nyeri High Court and that court awarded him custody of the children of the family because S W W admitted that she could not take care of them.

9. S T B concluded his evidence by stating that what they have cannot be called a marriage since they had not lived under the same roof since the year 2011. He requested that the marriage be dissolved.

10. S T B by his evidence alleged that S W W had been cruel, in their marriage, and that as a consequence their marriage had irretrievably broken down.

11. There has not been definitive definition of the word cruelty. This was recognized by Justice S J Chitembwe in the case: **K A S v M M K [2016] eKLR** where the Learned Judge adopted the following the case by: **Sir Charles Newbold in Colarossi V Colagrossi [1965] E A** where it was held that:

*“no comprehensive definition of cruelty has ever been accepted as satisfactory- much depends on the habits and circumstances of the matrimonial life of the husband and wife, their character, the normal mode of conduct one to the other and the knowledge which each has of the true intention and feelings of the other. An essential element of every petition based on cruelty is, however, that the party seeking relief must prove actual or probable injury to life, limb or health. For this reason, it is seldom indeed that a decree is granted upon a single act of cruelty though, should that act be serious enough and result in injury, then the court will grant the decree.”*

12. From the evidence of S T B it became obvious that S W W by disappearing from the family home for long periods of time without giving S T B any information of her whereabouts or well being. And on her return to the family home being violent to S T B. And engaging in excessive alcohol consumption, she was cruel to S T B. It was obvious to the court that S T B experience mental anguish as a result of S W W’s behaviour.

13. It is this court’s finding that S T B proved that his marriage to S W W had irretrievably broken down as provided under **Section 66 (2) (e) and (6) (b) of the Marriage Act No. 4 of 2014.**

14. Accordingly these are the orders of the court:

**(a) The marriage of STB and S W W celebrated on 20<sup>th</sup> November, 2007 is hereby dissolved.**

**A decree nisi shall issue and shall become absolute within 30 days.**

**(b) There shall be no orders as to costs.**

***Dated and Delivered at Nanyuki this 8<sup>th</sup> February, 2018***

**MARY KASANGO**

**Judge**

**Coram**

Before Justice Mary Kasango

Court Assistant: Njue/Maria Stella

Petitioner .....

Respondent .....

For petitioner .....

For Respondent .....

**COURT**

Judgment delivered in open court

**MARY KASANGO**

**JUDGE**