



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MOMBASA**  
**FAMILY DIVISION**  
**DIVORCE CAUSE NO. 11 OF 2016**

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

**VERSUS**

**O N.....RESPONDENT**

**JUDGMENT**

1. On 21.8.86, G M M the Petitioner herein then a spinster married O N, the Respondent herein then a bachelor at the [particulars withheld] Office in Mombasa. Following the marriage, the couple cohabited in Kisii and Mombasa.
2. The Petitioner has filed the Petition herein dated 15.3.16, seeking the dissolution of her marriage to the Respondent. The grounds upon which the Petitioner seeks divorce are cruelty, adultery and desertion.
3. The matter proceeded as an undefended cause, the Respondent having failed to file appearance in spite of being served with the Petition and Notice to Appear.
4. In her testimony in support of her Petition, the Petitioner stated that she is a clerk in the Public Trustee's Office in Mombasa. She and the Respondent began cohabitation in December 1985. They formalised their marriage at the Registrar's Office in Mombasa on 21.8.86 and were issued with a marriage certificate. A certified copy of the marriage certificate *Particulars withheld* was produced in Court as proof of the fact of the marriage. The marriage is blessed with 4 children, E M , born on 26.6.88, P K, born on 17.7.89, P O, born on 21.5.91 and A M, born on 8.8.94. Initially, they lived in Kisii, but the Petitioner was transferred to Mombasa in 1987 and joined the Respondent who was working in Mombasa.
5. In 1989, the Respondent asked the Petitioner to move back to Kisii to stay with his mother which she did. He joined her after a few months. The Petitioner claims that the Respondent treated her with cruelty. He used to beat her up even in the presence of the children. In 1993, he took on another woman named Mary. That he would go to Mary's house for about 2 days and upon his return he would beat the Petitioner up. He also demanded all her salary and would leave the Petitioner and the children with nothing. The Petitioner further claims that the Respondent had a previous relationship with one Theresa with whom he had a son. That his mother preferred Theresa to the Petitioner. That when the Respondent's mother died, Theresa came to the rural home and the Respondent's sisters told her to stay. That Mary also attended the funeral and together with the Respondent's sisters, abused the Petitioner forcing her to flee to her home in Kisii town. Thereafter due to the aforesaid circumstances, she returned to Mombasa in 1997. Since that time she and the Respondent have not resumed cohabitation. That Theresa remained in the

rural home while Mary stays with the Respondent in the Kisii town home. The Petitioner prayed for dissolution of the marriage. .

6.I have considered the Petition and the uncontroverted testimony of the Petitioner. The Marriage Act, 2014 at Section 66(2) provides for the grounds upon which a civil marriage such as the marriage herein may be dissolved. These include:

- a. **adultery by the other spouse;**
- b. **cruelty by the other spouse;**
- c. **exceptional depravity by the other spouse;**
- d. **desertion by the other spouse for at least three years; or**
- e. **the irretrievable breakdown of the marriage”**

7. From the Petitioner’s testimony, it would appear that the Respondent subjected the Petitioner to both physical and verbal abuse. He also carried on a relationship with Mary with whom he lives in Kisii town and Theresa who stays in the Respondent’s rural home. The Respondent’s conduct in this regard effectively made the Petitioner’s continued stay in the matrimonial home untenable resulting in constructive desertion. The Petitioner’s testimony is uncontroverted and I have no reason to doubt her. I am therefore satisfied that the grounds of cruelty, adultery and desertion have been established.

8. In view of the foregoing, it would appear that there is no hope for the marriage. Since 1997 when the parties separated, they have not resumed cohabitation. It is evident that the marriage herein has irretrievably broken down. Accordingly, I pronounce a decree of divorce and order that the marriage between the Petitioner and the Respondent **solemnized at the Registrar’s Office in Mombasa on 21.8.86** be and is hereby dissolved. Decree *nisi* to issue and the same to be made absolute within 1 month.

**DATED, SIGNED and DELIVERED in MOMBASA this 31<sup>st</sup> day of March 2017**

\_\_\_\_\_

**M. THANDE**

**JUDGE**

**In the presence of: -**

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

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

..... **Court Assistant**