



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MOMBASA**  
**FAMILY DIVISION**  
**DIVORCE CAUSE NO. 16 OF 2015**

**P W G .....PETITIONER**

**VERSUS**

**T N M .....RESPONDENT**

**JUDGMENT**

1. P W G the Petitioner herein then a spinster married T N M the Respondent herein then a bachelor on 5.1.02 at the *particulars withheld*, Nairobi. The couple was issued with marriage certificate serial number *particulars withheld*. **The Petitioner is a businesswoman while the Respondent is an engineer.**
2. The Petitioner has filed the Petition herein dated 9.2.15 seeking the dissolution of her marriage to the Respondent. The grounds upon which the Petitioner seeks divorce are cruelty desertion and adultery. The Petitioner also seeks custody of the children of the marriage. She further seeks that the mortgage at CFC Stanbic Bank be transferred to the Respondent.
3. A Notice of Appointment of Advocate for the Respondent was filed on 21.9.16. On that date, the matter was before the Deputy Registrar and the Respondent was granted 14 days to file his documents. The matter was fixed for directions on 12.10.16. On that date however, there was no appearance for the Respondent nor had his reply been filed. Given that the Respondent failed to comply with the order of 21.9.16, the Deputy Registrar gave directions for the matter to proceed as undefended.
4. In her uncontroverted testimony in support of her Petition, the Petitioner states that she and the Respondent got married on 5.1.02 at St. Paul's University Chapel, Nairobi. They lived in Nairobi until April 2004 and then moved to Diani where the Respondent was working. At the time, they had 1 child, M M born on 23.5.02. Later that year, the family moved to Bombolulu, Mombasa when the Respondent secured employment at *particulars withheld*. All this time the marriage was good.
5. In 2008 after their second child R M was born on 27.3.08 however, things changed. Upon her return from hospital with the new born baby, the Petitioner noticed a change in attitude in her house girl and there was talk in the neighbourhood that she and the Respondent were in a relationship. She claims that she confirmed this when she discovered from their telephones that they had been sending messages to each other and the Respondent had been sending her money on *Mpesa*. Upon confronting him, the Respondent became violent forcing the Petitioner to flee. Thereafter, following mediation by family, relatives and the Church, the parties reconciled.
6. In September 2008, the Respondent got a job in Tanzania. He left in spite of opposition from the Petitioner who argued that the terms of the new job were no better than what he had in Mombasa. He

stayed in Tanzania for 3 months after which he lost the job. During the 3 months he did not visit the family although he was in contact with the Petitioner. The Respondent thereafter got employment with *particulars withheld* in Uganda in January 2009. He stayed there for 3 years during which time he visited the family only once. During this visit, she went through his laptop and found communication between the Respondent and one J K G as well as pictures of them together. In 2013 he moved to *particulars withheld* in Nairobi and lives with the said J K G. They have a child together named M M and even posted pictures of all 3 of them on Facebook a fact that they both acknowledged. The last time they last shared a roof was in 2008. As a result of the foregoing, the Petitioner prays that the marriage be dissolved.

7. I have considered the Petition and the uncontroverted testimony of the Petitioner. The marriage herein is a Christian marriage having been conducted at the *particulars withheld*. The grounds upon which a Christian marriage may be dissolved are stipulated in the Marriage Act, 2014 at Section 65. These include:

*(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”*

8. From the testimony of the Petitioner the Respondent left the matrimonial home periodically for extended periods. Initially for 3 months while in Tanzania with no visit to the family; then 3 years in Uganda with only 1 visit to the family; from 2013 to date in Nairobi with no visit whatsoever. Since 2008, the Respondent has stayed away from the matrimonial home. The law requires that desertion be for a period of at least 3 years to constitute a ground for divorce. The Petition was filed in 2015 about 7 years have elapsed since the desertion by the Respondent. Consequently, I do find that the ground of desertion has been established.

9. On the ground of adultery, the Petitioner has produced pictures of the Respondent and J K G and their child M M. The conduct of the Respondent of keeping away and abandoning his family for another woman no doubt caused the Petitioner emotional and psychological anguish. I do find that rounds of adultery and cruelty have been established.

10. No evidence was adduced regarding the claim regarding the mortgage with CFC Stanbic Bank. The Court therefore makes no finding thereon.

11. The facts herein point to a marriage that has irretrievably broken down. Since the desertion in 2008, the parties have not resumed cohabitation. It would appear that there is no hope for the marriage. Consequently, I pronounce a decree of divorce and order that the marriage between the Petitioner and the Respondent **solemnized on 5.1.02** at the St. Paul's Catholic Chapel, Nairobi be and is hereby dissolved. Decree *nisi* to issue and the same to be made absolute within 1 month. That matter concerning the custody of the children of the marriage shall be determined by the Children's Court which has jurisdiction in the first instance.

**DATED, SIGNED and DELIVERED in MOMBASA this 10<sup>th</sup> day of March 2017**

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**M. THANDE**

**JUDGE**

**In the presence of: -**

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

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

..... **Court Assistant**