



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MOMBASA
FAMILY DIVISION
DIVORCE CAUSE NO. 12 OF 2015

W N KPETITIONER

VERSUS

E W NRESPONDENT

JUDGMENT

1. The Petitioner W N K has filed the Petition herein dated 10.3.15, seeking the dissolution of her marriage to E W N the Respondent whom she married on 28.7.08 at the **Registrar's Office in Mombasa. She also seeks custody of the children of the marriage.**
2. The grounds upon which the Petitioner seeks divorce are cruelty, desertion and adultery.
3. Although the Respondent was served with the Petition and Notice to Appear, he failed to file appearance. The matter therefore proceeded as an undefended cause.
4. In her brief testimony in support of her Petition, the Petitioner stated that she married the Respondent on 28.7.08 at the **Registrar's Office in Mombasa and they were issued with a marriage certificate. A certified copy of the marriage certificate serial number *Particulars withheld* was produced as proof of the marriage. Following the marriage, the couple cohabited in Mtongwe till September 2012 when the Respondent left the matrimonial home and deserted the Petitioner. The marriage is blessed with 2 children, B M K born on 13.11.05 and S N born on 29.4.11.**
5. The Petitioner accused the Respondent of arrogance and disrespect towards her. He was brutal and never provided for the family. He used to sleep with other women and even the house girls employed in their home. Eventually he abandoned the family and went and married one M G in 2013. They have a child who is 2 ½ years old. He has never returned since nor has he seen or talked to either the Petitioner or the children. Attempts at reconciliation through a church pastor and the Respondent's family were arrogantly rebuffed by the Respondent. When the Respondent was served with the Petition, he called the Petitioner and told her that he did not care about what she intended to do. According to the Petitioner, the marriage has irretrievably broken down and she just wants to move on with her life.
6. From the testimony of the Petitioner, it is evident that the marriage herein has irretrievably broken down. The marriage was conducted at the Registrar's office in Mombasa. It is therefore a civil marriage. The Marriage Act, 2014 at Section 66(2) provides for the grounds upon which a civil marriage 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. The Petitioner seeks dissolution of the marriage on the grounds of cruelty, adultery and desertion. The Respondent treated the Petitioner with cruelty by being brutal, arrogant and disrespectful her. He failed to support the children of the marriage. He has been adulterous with the women including house girls employed in their home. The Respondent deserted the Petitioner in 2012 and has never returned. He is currently married to M G and they have a child. The testimony of the Petitioner is uncontroverted and I have no reason to doubt the same. It would appear that there is no hope for the marriage which has irretrievably broken down.

8. In view of the foregoing, 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 28.7.08** be and is hereby dissolved. Decree *nisi* to issue and the same to be made absolute within 1 month. The matter concerning the custody of the children of the marriage may be determined by the Children’s Court which has jurisdiction in the first instance. Each party to bear own costs.

DATED, SIGNED and DELIVERED in MOMBASA this 12th May 2017

M. THANDE

JUDGE

In the presence of: -

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

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

..... **Court Assistant**