



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

**FAMILY DIVISION**

**DIVORCE CAUSE NO. 71 OF 2013**

**A W K .....PETITIONER**

**VERSUS**

**S P M G .....RESPONDENT**

**JUDGMENT**

1. The Petitioner A W K has filed this petition dated 3.9.13 seeking the dissolution of her marriage to the Respondent S P M G . The Respondent in spite of service of the Notice to Appear and the Petition by substituted means, with leave of Court failed to put in any appearance. The matter proceeded as an undefended cause.
2. The grounds for divorce as stated in the Petition are cruelty, adultery and desertion, the particulars of which are set out in paragraph 6 of the Petition. The Petitioner testified in court on 3.12.15. She told the court that she and the Respondent got married on 18.4.09 at [particulars withheld] Church in Kirinyaga. Following their marriage, the couple cohabited in Mtwapa, Mombasa. Thereafter in 2010, the Respondent returned to Naromoru where he is a businessman and has since never returned. The Petitioner testified that she made several attempts to look for him; that in 2011 she went to his home in Naromoru but found a woman named Mary in his house; that she has gone to his house 3 times and found the same woman there; that in 2013 the Respondent came to her house in Mtwapa and she welcomed him and he spent the night at her house. The following morning she left for work and left him at the house. Upon her return in the evening, she found him gone and she discovered that he had ransacked her house and taken their wedding photo album, her clothes and bags. She stated that the Respondent's acts of desertion, cruelty and adultery have caused her great distress as she only had a marriage certificate but no husband. There are no issues in the marriage. She prayed that this Court sets her free.
3. I have considered the Petition and the uncontroverted testimony of the Petitioner. The sad facts herein are as follows. The Petitioner and the Respondent married [particulars withheld] Church in Kirinyaga on 18.4.09. The marriage certificate serial number [particulars withheld] is sufficient proof of the fact of the marriage. After the marriage the two cohabited as husband and wife in Mtwapa, Mombasa. However in 2010, the Respondent deserted the Petitioner. He returned to Naromoru and never returned. When the Petitioner went looking for him in Naromoru, he found a woman by the name Mary in his house. In 2013 when the Respondent went to the Petitioner's home in Mtwapa, The Petitioner was hopeful that the Respondent had finally returned to her and she welcomed him. It turned out however that the Respondent had not returned to her but in fact abused the welcome by ransacking the Petitioner's house and stealing her bags, clothes and wedding photo album. Since 2013, the Petitioner has not seen the Respondent. The Petitioner lives

in Mtwapa, Mombasa while the Respondent lives in Naromoru. The petitioner then filed this Petition seeking a divorce.

4. The Marriage Act, 2014 at Section 65 provides for the grounds upon which a Christian marriage may be dissolved. 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”*

5. In her Petition and in her evidence the Petitioner cites the grounds of desertion, adultery and cruelty.

6. On the ground of desertion, the Petitioner told the Court that the Respondent deserted the Petitioner in 2010. He only returned briefly for one night in 2013. His reappearance was however on a mission to steal from her and not to come back to her as husband. He has not returned since. For desertion to constitute a ground for divorce, it must run for a period of at least 3 years. It is the Petitioner’s testimony that the Respondent left the matrimonial home in January 2010. I am satisfied that the ground of desertion has been proved.

7. On the ground of adultery, the Petitioner testified that when she went looking for the Respondent at his home in 2011 she found a woman by the name M in his house. That she found her there the three times she went looking for the Respondent. The presence of this woman M in the Respondent’s home each time the Petitioner went looking for the Respondent confirms the allegations of adultery. I therefore find that the ground of adultery has been proved.

8. On the ground of cruelty, the Petitioner testified that the Respondent’s acts of desertion, adultery and stealing from her caused her great distress. Indeed the statement by the Petitioner that she has a marriage certificate but no husband is an indication of the great pain and cruelty she has been subjected to by the Respondent. I therefore find that the ground of cruelty has also been proved.

9. It is clear from the foregoing that the marriage herein is virtually non-existent. It is marriage on paper only. Accordingly, I pronounce a decree of divorce and order that the marriage solemnised at the [particulars withheld] Church in Kirinyaga on 18.4.09 be and is hereby dissolved. Decree nisi to issue and the same to be made absolute within 1 month. Costs to be borne by the Respondent.

**DATED, SIGNED and DELIVERED in MOMBASA this 8<sup>th</sup> day of February, 2016.**

**M. THANDE**

**JUDGE**

**In the presence of: -**

..... **for the Applicant**

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

..... **Court Assistant**