



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**DIVORCE CAUSE NO. 232 OF 2013**

**BETWEEN**

**P N B.....PETITIONER**

**AND**

**J L B.....RESPONDENT**

**JUDGEMENT**

1. Marriage was celebrated between the parties herein on 17<sup>th</sup> April 2007 at a civil ceremony at the office of Registrar of Marriages at Nairobi. A certificate of marriage serial number *[particulars withheld]* was duly issued to the parties. The couple thereafter reaffirmed their vows at a Hindu religious ceremony at the SCLP Samaj Temple at Nairobi in accordance with Hindu traditions. The couple thereafter cohabited at Nairobi, Kenya, as husband and wife. They were blessed with issue, two children, J J B (born in 2008) and S B (born in 2013).

2. The petition in this matter was filed in court on 29<sup>th</sup> October 2013. The petitioner accuses the respondent of desertion, cruelty, rape and adultery. It is averred that the acts of cruelty, rape, desertion and adultery complained of caused the petitioner much embarrassment, mental anguish and physical suffering, and the marriage has, as a result, for all purposes irretrievably broken down.

3. The particulars of cruelty have been set out in the petition. It is said that the respondent has on occasions slapped the petitioner and threw her to the floor, has pulled her hair and banged her against a wall, has kicked her on her stomach back and legs, among others. The petitioner avers that during the course of the marriage, the respondent has consistently raped her forcing himself sexually on her against her will. She complains that as a result of the said rapes she conceived and the respondent forced her to abort the said pregnancies against her will. The respondent is also said to have had sexual relations with other women who are not known to the petitioner and whose particulars have not been disclosed. As a result of the cruel acts, meted out on her, as enumerated above, the petitioner was forced to flee the matrimonial home in 2013.

4. The petitioner seeks in the main dissolution of the marriage, full custody of the children of the marriage, maintenance for herself and the children, and costs of the suit.

5. The petition was served on the respondent and he filed a response to it on 26<sup>th</sup> June 2014. He denies all the allegations made in the petition, and accuses the petitioner of having deserted the respondent by going back to her parents but never came back. She is said to have even taken up employment in Australia

where she had relocated, forcing the respondent to also move to Australia to join her and their children. He further accuses her of having maintained a relationship with a man from India called Dev, who sent her a mobile phone and with whom she has been having constant communication. He states that the alleged abortions were done without his knowledge and that that was matter that has caused him a lot of mental pain.

6. On 23<sup>rd</sup> July 2014 the Deputy Registrar certified that the matter proceeds for hearing as a defended cause.

7. The matter came up for hearing on 5<sup>th</sup> March 2015, when the parties recorded a consent, which disposed of some of the issues. The petitioner testified. She was not cross-examined by counsel for the respondent, although he was in attendance. The respondent did not testify. The petitioner gave vent to the allegations made in her petition, and also relied on the witness affidavits of M K, H B and P B. She pleaded that the marriage had broken down completely and could not be reconciled. She prayed for dissolution of the marriage, but dropped her claim for maintenance. As the respondent did not testify, the petitioner's testimony went unchallenged. I am therefore satisfied that the respondent treated the petitioner with cruelty throughout the course of the marriage between them.

8. It would also appear to me that there has been no collusion between the parties in the bringing of these proceedings. I am also satisfied that the petitioner did not condone the matrimonial offence of cruelty.

9. I am disposed in the circumstances of the above to make the following orders:-

- (a) That I hereby dissolve the marriage celebrated between the petitioner and respondent;
- (b) That all the matters touching on the children of the marriage to be placed before the Children's Court;
- (c) That decree *nisi* shall issue forthwith, to be made absolute after thirty (30) days;
- (d) That petitioner shall have costs of the suit.

**DATED, SIGNED and DELIVERED at NAIROBI this 5<sup>TH</sup> DAY OF FEBRUARY, 2016.**

**W MUSYOKA**

**JUDGE**

**In the presence of .....advocate for the Petitioner.**

**In the presence of .....advocate for the Respondent.**