



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MOMBASA**  
**FAMILY DIVISION**  
**DIVORCE CAUSE NO. 16 OF 2014**

**S M B.....PETITIONER**

**VERSUS**

**F M W .....RESPONDENT**

**JUDGMENT**

1. The Petitioner **S M B** has filed this petition dated 7.1.14 seeking the dissolution of his marriage to the Respondent **F M W**. The Respondent despite of service of the Notice to Appear and the Petition failed to put in any appearance. The matter therefore proceeded as an undefended cause.
2. The grounds for divorce as stated in the Petition are cruelty and desertion. The petitioner claims that since the celebration of the marriage the Respondent has treated the Petitioner with cruelty causing him psychological trauma, depression and his health has been gravely affected. The particulars of cruelty are set out in paragraph 9 of the Petition and include denial of conjugal rights, abusing the Petitioner in public making it difficult for the Petitioner to socialise, being unreasonably possessive and violent, failing to care for the wellbeing of the Petitioner. The Petitioner further claims that the Respondent deserted the matrimonial home in 2008 never to return.
3. The Petitioner testified in court that he and the Respondent got married on 27.1.06 at the Registrar's Office in Mombasa. Following their marriage, the couple cohabited in Mombasa but were not blessed with any children; that the Respondent left the matrimonial home in April 2008 and had not returned since; that the Respondent subjected him to cruelty in that she humiliated him in public; that she tortured him psychologically even before his parents; that she would lock him out of their matrimonial home; that since she left, the Petitioner has made no attempts to reach out to her. He stated that the marriage has no chance and prays that the same be dissolved.
4. I have considered the Petition and the uncontroverted testimony of the Petitioner. The facts herein are that the Petitioner and the Respondent married at the Registrar's Office in Mombasa on 27.1.06. The certified copy of the marriage certificate serial number [particulars withheld] is sufficient proof of the fact of the marriage. After the marriage the two cohabited as man and wife in Mombasa but were not blessed children. From the evidence of the Petitioner, the Respondent subjected him to cruelty in that she has denied him conjugal rights by reason of her desertion. She humiliated him in public and in the presence of his parents. She also locked the Petitioner out of the matrimonial home. The Respondent left the matrimonial home in 2008 and has never returned.

5. 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”**

6. In his Petition and in his evidence, the Petitioner cites the ground of desertion and cruelty.

7. On the ground of desertion, the Respondent left the matrimonial home in 2008. The law requires that for desertion to constitute a ground for divorce, it must be for a period of at least three years. In the instant case, the desertion by the Respondent has been for seven years. I therefor find that the ground of desertion has been proved.

8. On ground of cruelty, the Petitioner has not enjoyed conjugal rights for seven years as a result of the Respondent’s desertion. The Respondent has humiliated the Petitioner in public and in the presence of his parents. The Respondent has also locked the Petitioner out of the matrimonial home. All these acts of the Respondent have caused the Petitioner anguish, psychological trauma and depression. I find that the treatment that the Respondent subjected the Petitioner to amounts to cruelty.

9. The Petitioner and the Respondent have lived apart since 2008. No effort at reconciliation has been made by either party. The marriage is therefore virtually non-existent. Accordingly, I pronounce a decree of divorce and order that the marriage solemnised at the Registrar’s Office in Mombasa on 27.1.06. be and is hereby dissolved. Decree *nisi* to issue and the same to be made absolute within 1 month. Each party to bear its own costs.

**DATED, SIGNED and DELIVERED in MOMBASA this 10<sup>th</sup> day of February, 2016.**

**M. THANDE**

**JUDGE**

**In the presence of: -**

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

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

..... **Court Assistant**