



**REPUBLIC OF KENYA**

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

**FAMILY DIVISION**

**DIVORCE CAUSE NO. 190 OF 2014**

**G M J.....PETITIONER**

**VERSUS**

**M N J..... RESPONDENT**

**JUDGEMENT**

1. Marriage was celebrated between the parties herein on 21<sup>st</sup> February 1998 in Nairobi. A certificate of marriage serial number [particulars withheld] was issued to them in accordance with the Marriage Act. The parties cohabited thereafter at various addresses in Nairobi, New York, Lausanne and Sao Paolo. The couple was blessed with issue – G A X M J – born on 21<sup>st</sup> May 1998.

2. It is pleaded that the respondent has constructively deserted the petitioner. She is said to have been physically unavailable to the petitioner since 2005, as the parties have been living separately since December 2005. It is averred that the marriage has irretrievably broken down and the parties have not since 2005 been having conjugal connection. It is stated that the parties have not made any efforts to reconcile. The petitioner seeks dissolution of the marriage, joint custody and maintenance of the child, costs of the suit, among other prayers.

3. Upon being served the respondent filed an answer to the petition and a cross-petition. She denies *in toto* the allegations made against her in the petition. She concedes in the cross-petition that the marriage between them had broken down to the extent of being beyond salvage, and blames the petitioner for that. She accuses him of cruelty. She has given a chronology of times when the petitioner assaulted her. She pleads that the marital situation in the 2000 and thereafter had exposed her to immense physical and emotional turmoil. She states that it was on account of the said cruelty that she realised that the marriage had irretrievably broken down. She prays that the marriage be dissolved in terms of her cross-petition, with costs.

4. Only the petitioner testified in the matter. His testimony breathed life to the averments made in his petition herein.

5. I have taken cognisance of the fact that the parties herein have been separated since 2005. There is therefore ample evidence that the marriage between them is no more, for cohabitation is among the most basic of the critical elements of a marriage. Parties to a marriage who live apart for a prolonged period of time cannot really truly claim to be in a working union. I have noted too that both parties sought dissolution thereof.

6. In the circumstances, I am moved to make the following final orders:-

- a. **That the marriage between the petitioner and the respondent, celebrated on 21<sup>st</sup> February 1998, is hereby dissolved;**
- b. **That decree *nisi* shall issue forthwith, to be made absolute after thirty (30) days;**
- c. **That, as the child of the marriage has reached the age of majority, I will make no orders on**

**custody, maintenance and control thereof; and**

**d. That each party shall bear their own costs.**

**DATED, SIGNED and DELIVERED at NAIROBI this 1<sup>ST</sup> DAY OF JULY, 2016.**

**W. MUSYOKA**

**JUDGE**