



**REPUBLIC OF KENYA**

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

**DIVORCE CAUSE NO.223 OF 2013**

**K L M .....PETITIONER**

**VERSUS**

**D H M.....RESPONDENT**

**JUDGMENT**

1. The Petitioner has filed a petition dated 16th October 2013 seeking the dissolution of her marriage to the respondent. She started cohabiting with the respondent as husband and wife in the year 2001 and later solemnized their marriage at Karen Brixen in Nairobi 2003. They were issued with a certificate of marriage under Cap 151 Laws of Kenya. The parties cohabited in various parts of country in Nairobi Lavington and Kileleshwa and also in the United Kingdom. The parties were blessed with two issues of the marriage. I E N M born on 3<sup>rd</sup> May 2004 and J K N M born on 19<sup>th</sup> January 2009.

2. The petitioner avers that during the said marriage the respondent has treated her with cruelty extreme violence, general abuse subjected the petitioner to constant fear and psychological torture. She particularized cruelty as;

- i. The Respondent has been very cruel and violent towards the petitioner on several occasions even while pregnant
- ii. The respondent has physically assaulted the petitioner in presence of the kids.
- iii. The respondent has not been contributing towards household expenses and not paying any bills.
- iv. The respondent has declined/failed and refused/neglected to maintain the family.

3. The petitioner claims that due to the said cruelty she had to leave the matrimonial home and the respondent caused her to constructively desert the marriage as the respondent is of ungovernable temper. She claims that the marriage has irretrievably broken down and there are no chances of reconciliation. She denies condoning the respondent's violence, cruelty and desertion. She seeks dissolution of her marriage to the respondent and cost of the application.

4. The respondent despite being served did not enter appearance of file an answer to the petition. The petitioner applied for Registrar's certificate and the matter proceeded as an undefended petition.

5. The petitioner testified that she got married to the petitioner on 18<sup>th</sup> April 2003 in Karen and moved to United Kingdom thereafter. Their 1<sup>st</sup> child was born on 3<sup>rd</sup> May 2004 in London. Their marriage started experiencing problems when the respondent became hostile towards her, ran up debts on a credit card and

at times stole money from her. She also testified that he was unfaithful to her. He started sleeping in a separate bedroom watching pornography and at times slept out. In 2006 things became worse when she walked in on him when he was about to have sex with another woman resulting her to obtain sick off for a week. By June 2006 he was jobless and returned to Kenya. In October they tried to reconcile and on realizing that the marriage certificate they had been issued was not valid they remarried at the Attorney General's Chambers in October 2006. In 2007 she moved to Nairobi and they rented a house at Kileleshwa and found work. The respondent drank heavily and slept out and on one occasion hit her while drunk. That he spent all his earnings on himself and did not contribute towards family expenses. He was aggressive when drunk and she and the child were scared of him and she would at times move in with friends for a few days. In 2008 while pregnant she forgot the key and the respondent almost broke the door. During her second pregnancy she kept getting candida infections and the doctor kept prescribing medication for the her and the respondent but he became pregnant and refused to use it. On 19<sup>th</sup> January 2009 their second daughter was born and she was diagnosed with anxiety and depression and narrates various instances when she became overwhelmed emotionally and broke down into tears. In May 2012 he locked her in and tried to strangle her while she was praying with the younger baby she luckily managed to open the door and they ran out. She stated that she tried to persevere for the sake of the children and for fear of being a single parent. Only to realize she needed that her financial situation and mental health would improve if she left the respondent.

6. The petitioner's evidence was not challenged. The petitioner has raised various grounds; cruelty and adultery. It is evident that there is no possibility of reconciliation and the marriage has irretrievably broken down. Section 8 of the Matrimonial Act (now repealed) outlines grounds of divorce. The Marriage Act 2014 at Section 66 outlines the grounds for dissolution of a marriage, amongst them being cruelty. The petitioner has given a detailed account of the cruelty meted out to her by the respondent even in front of the children of the marriage and the same has started affecting the petitioner's health. She underwent emotional stress which is cruelty and was forced to work out of the marriage for her own safety and that of the children of the marriage. I find that the marriage has irretrievably broken down and there is no possibility of reconciliation. This court therefore dissolves the marriage between the Petitioner and the Respondent celebrated on the 4<sup>th</sup> October 2006. A *decree nisi* to issue forthwith and to be made absolute within 30 days. No orders as to cost. It is so ordered.

Dated, signed and delivered this 6<sup>th</sup> day of **March** 2015.

**R. E OUGO**

**JUDGE**

In the presence of:

..... For the Petitioner

..... For the Respondent

.....Court Clerk