



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

**AT BUSIA**

**DIVORCE CASE NO. 2 OF 2014**

**M N M.....PETITIONER**

**VERSUS**

**C J A.....RESPONDENT**

**J U D G M E N T**

1. C J A (C) and M N M (M) are Husband and Wife whose union is in doldrums. Through this Petition, M is desirous that the union be dissolved.

2. The two were initially married under Teso Customary Law in 1977 or thereabouts. That union was later, on 30<sup>th</sup> May 1986 (not on 9<sup>th</sup> February 1995 as stated in the Petition) solemnized as a Christian Marriage in a celebration held at [*particulars withheld*] Catholic Church in Nairobi. At the time of the Customary Marriage, M already had a girl child by the name E W. She was adopted as the child of the union under Teso Custom. The union of M and C was to be blessed with more children namely;

**i. A A born on 20<sup>th</sup> October 1977**

**ii. R O born on 26<sup>th</sup> December 1980**

**iii. A P born on 16 August 1982**

3. It was in evidence of M that in the cause of the Coverture C was a cruel and violent man. That on several occasions he not only assaulted her verbally but also physically. This state of affairs came to a head when sometime in 1995 M learnt that E, their now adult daughter, was having a Sexual Relationship with her Husband C.

4. It was the Testimony of M that she caught E and C red-handed making love in the matrimonial bed. Not unexpectedly a quarrel ensued between the couple which ended up with C giving M a thorough beating. M left the Matrimonial home on the 31<sup>st</sup> of December 1995, never to return.

5. It was her evidence that the incident exasperated her emotional pain and left her a woman of low esteem. She no longer considers herself the wife of C and has no desire of ever returning to the matrimonial home or to the union. In her own words the marriage is for all intents and purposes dead. In seeking dissolution of the marriage she emphasized that she did not and could not condone or connive to the adulterous and cruel conduct of C.

6. In her Petition dated 23<sup>rd</sup> August 2013 she made the following prayers;-

**a. A decree of divorce to issue herein**

**b. Confirmation of ownership of L.R. No. [particulars withheld]in her favour to the exclusion of the respondent herein**

**c. The costs of this petition**

The Respondent neither entered appearance to the Petition nor attended its hearing notwithstanding that there was evidence that he had been served.

7. The pleadings by M are unchallenged and her evidence uncontroverted. This Court believes her evidence that C is guilty of cruelty and engaging in an incestuous relationship with a child of the marriage. This Court believes M when she says her marriage to C has irretrievably broken down. When she walked out of her Matrimonial Home Twenty (20) years ago she neither returned to the home nor her union with her Husband. That is clear enough evidence that she is no longer interested in the marriage and it has come to an irretrievable end. It would be needless to keep the two in a relationship that long died. The Petitioner has satisfied the grounds for dissolution of a Christian Marriage as provided under section 65 of the Marriage Act (Act No. 4 of 2014). Fortunately the last child of marriage is now over 32 years and the question of custody of the children of marriage cannot be an issue.

8. In the Petition, M had also asked this Court to confirm that she was the sole owner of L.R. No. [particulars withheld]. In her evidence she stated that she had bought this property on her own and it was registered solely in her name. It was also her Testimony that C had placed a caution in the register in respect to that property, hence her keenness to have a Court declaration that she was the owner of the Property to the exclusion of the Respondent. Her pleadings and evidence are, again, not contested. This Court will believe her.

9. The result is I hereby allow the Petition in its entirety. The marriage between M and C entered into in 1977 or thereabouts and later solemnized on 30<sup>th</sup> May 1986 at [particulars withheld] Catholic Church is hereby dissolved. A Decree Nisi dissolving the said marriage is hereby issued. The Decree Nisi shall be made absolute thirty (30) days from the date of this Judgment. There shall be no order as to costs.

**DATED, SIGNED AND DELIVERED AT BUSIA THIS 4TH DAY OF MARCH 2015**

**F. TUIYOTT**

**J U D G E**

**IN THE PRESENCE OF:**

**KADENYI.....COURT CLERK**

**MAKOKHA FOR OWINYI.....FOR THE PETITIONER**

**N/A.....FOR THE RESPONDENT**