



**REPUBLIC OF KENYA**

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

**DIVORCE CAUSE NO. 235 OF 2013**

**BETWEEN**

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

**AND**

**S M N**.....**RESPONDENT**

**JUDGEMENT**

1. Marriage was celebrated between the parties herein on 28<sup>th</sup> September 2012 at the office of the Registrar of Marriages, Nairobi. A certificate of marriage serial number *[particulars withheld]* was issued to them in accordance with the Marriage Act. The couple thereafter cohabited in Nairobi, Kenya, as husband and wife. They were blessed with issue, two children – S M W and P M.
2. The petition in this matter was filed in court on 5<sup>th</sup> November 2013. The petitioner does not seek dissolution of the marriage but rather that the court do declare that the respondent and her are no longer bound to cohabit as husband and wife. She founds her claim on the grounds of cruelty and adultery. She prays too for her maintenance and that of the children of the marriage
3. The particulars of cruelty being that the respondent has been cruel and violent to the petitioner and has used abusive language towards the petitioner in the presence of the children of the marriage. She has attached copies of medical reports as proof of the cruelty. The details of adultery are that the respondent has had adulterous relations with house help. She pleads that in view of the said the matrimonial offences the marriage between them has irretrievably broken down.
4. The respondent was served with the divorce papers. He filed an answer to the petition. He denies the allegations made against him in the petition. He cross-petitions for divorce on grounds of desertion. He alleges that the petitioner has failed to return to the matrimonial home despite various attempts to reconcile the marriage, she having left the matrimonial home on 24<sup>th</sup> July 2013. He prays for dissolution of the marriage and joint custody of the children of the marriage..
5. The petitioner reacted to the allegations in the answer to the petition by filing a reply to the answer to the petition. She denies all the allegations made in the answer to the petition, and reiterates the allegations made in her petition.
6. On 25<sup>th</sup> September 2014 the Deputy Registrar certified that the matter proceeds for hearing as a

defended cause.

7. The matter came up for hearing on 20<sup>th</sup> November 2011. The petitioner testified and gave vent to the allegations made in her petition. No counter evidence was given by the respondent, and therefore the petitioner's story was not controverted.
8. It would appear to me that the marriage between the parties herein has irretrievably broken down. I find that the respondent has been cruel to the petitioner. However, I cannot order dissolution of the marriage as the petitioner has not sought for it. She appears to be seeking judicial separation.
9. I note that the three years have not expired since the celebration of the marriage. That would perhaps explain why the petitioner is not seeking dissolution of the marriage, but rather separation.
10. On her maintenance, I note that the petitioner did not lead any evidence to show that she is needy and therefore deserving of maintenance. She did not adduce any evidence on her needs, nor of the means of the respondent.
11. Regarding the maintenance of the children, I note that there is a pending children's case before the Children's Court. Issues touching on the maintenance and custody of the children should be dealt with by that court.
12. It would also appear to me that there has been no collusion between the petitioner and the respondent in the bringing of these proceedings.
13. I am disposed to make the following orders: -
  - a. That I hereby declare that the petitioner and the respondent are not no longer bound to cohabit as husband and wife;
  - b. That there will be no orders as to costs.

**DATED, SIGNED and DELIVERED at NAIROBI this 6<sup>th</sup> DAY OF March 2015.**

**W. MUSYOKA**

**JUDGE**