



**REPUBLIC OF KENYA**

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

**DIVORCE CAUSE NO. 59 OF 2013**

**N K C.....PETITIONER**

**VERSUS**

**M N K.....RESPONDENT**

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

The Petitioner and the Respondent were on 8<sup>th</sup> February 2011 married at the Registrar's Office in Nairobi. The marriage was celebrated under the **Marriage Act**. The Petitioner and the Respondent were blessed with one child born prior to the informal marriage. According to the Petitioner, since the celebration of the said marriage, the marriage has not been consummated. The Petitioner averred that he has not lived with the Respondent since the celebration of the marriage. He further accused the Respondent of denying him conjugal rights. The Petitioner complained that the Respondent suffered from a mental disease prior to the marriage. In the premises therefore, the Petitioner prays that the marriage be nullified.

The Respondent was served with a copy of the petition for divorce together with a notice requiring her to enter appearance. She did not enter appearance. Neither did she file an answer to the petition. The Deputy Registrar of this court issued a certificate certifying that this was a suitable divorce cause to be disposed of as an undefended cause. During the hearing of the cause, this court heard oral evidence adduced by the Petitioner. He essentially reiterated the contents of his petition for divorce. He told the court that the marriage was not consummated because he traveled to the United States of America to bury his mother immediately after the celebration of the marriage. He testified that he returned in July, 2011 but that the Respondent has since denied him conjugal rights. He told the court that the Respondent had developed a mental problem and had previously threatened to harm him. It is for these reasons that the Petitioner urged the court to grant his petition for divorce. This court has carefully considered the grounds put forward by the Petitioner in support of his petition for divorce on the ground of nullity. This court holds that the Petitioner did indeed prove to the required standard of proof on a balance of probabilities that indeed his marriage to the Respondent should be declared a nullity and be dissolved by reason of non-consummation of the marriage. The Petitioner's evidence is uncontroverted. From the evidence adduced, it was clear that the Petitioner and the Respondent have not related as husband and wife since the celebration of the marriage.

In the premises therefore, the marriage celebrated on 8<sup>th</sup> February 2011 at the Registrar's Office in Nairobi between the Petitioner and the Respondent is hereby dissolved. Decree nisi dissolving the said marriage is hereby issued. The decree nisi shall be made absolute thirty (30) days of the date of delivery this judgment. There shall be no orders as to costs.

**DATED AT NAIROBI THIS 13<sup>TH</sup> DAY OF MARCH, 2014**

**L. KIMARU**

**JUDGE**