



**REPUBLIC OF KENYA**

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

**DIVORCE CAUSE NO.19 OF 2010**

S S.....PETITIONER

**VERSUS**

K S S.....REPODENT

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

The Petitioner and the Respondent were married on 6<sup>th</sup> December 1992 under the Hindu Traditional marriage rites. They formalized their marriage on 24<sup>th</sup> August 1994 when they were married at the Registrar's Office in Nairobi under the **Marriage Act**. After the celebration of the marriage, the Petitioner and the Respondent cohabited together as husband and wife in various estates within the city of Nairobi. The marriage was blessed with two issues, sons, born on 11<sup>th</sup> June 2000 and 25<sup>th</sup> September 2003. According to the Petitioner, the Respondent had since the celebration of the said marriage treated her with cruelty. She set out the particulars of cruelty in her petition for divorce. In summary, she states that the Respondent had on several occasions been violent towards her. She complained that the Respondent physically assaulted her during the subsistence of the marriage. She avers that the Respondent was verbally abusive and had neglected his duty as a husband and a father by failing to provide her basic needs and for the children of the marriage. She further states that the Respondent had humiliated and embarrassed her in the presence of her children and relatives. She also complained that the Respondent was a difficult person and had caused her mental anguish. She stated that she had been separated from the Respondent since 23<sup>rd</sup> December 2008. For these reasons, the Petitioner was of the view that her marriage to the Respondent had irretrievably broken down. She therefore urges the court to dissolve the marriage and grant her custody of the children of the marriage. She also urged the court to issue orders of maintenance for her upkeep and that of the children of the marriage. She also prayed to be granted costs of the petition.

When the Respondent was served, he did enter appearance and filed an answer to the petition. He denied the allegations made in the petition for divorce by the Petitioner. In particular, he denied that he had treated the Petitioner with cruelty. He denied the particulars of cruelty put forward by the Petitioner and put the Petitioner to strict proof thereof. The Respondent stated that he had been discharging his responsibilities as a father and a husband until the Petitioner deserted the matrimonial home with the children of the marriage. He complained that the Petitioner has since denied him access to the children. According to the Respondent, the marriage has irretrievably broken down due to the fault of the Petitioner. In the premises therefore, the Respondent urged the court to dissolve the marriage to the Petitioner. He further prayed to be granted custody of the children of the marriage. In the alternative, he prayed that he be granted access to the children of the marriage.

During the hearing of the petition for divorce, the Respondent was served with the hearing notice to attend court. He failed to attend court. This court heard evidence adduced by the Petitioner. She essentially reiterated the contents of her petition for divorce. She accused the Respondent of committing adultery during the subsistence of the marriage. She urged the court to dissolve the marriage since every effort at salvaging the same had failed. The evidence adduced by the Petitioner was uncontroverted. This court has carefully considered the facts of this divorce cause. It was clear from the pleadings filed by both parties and also by the evidence adduced by the Petitioner in court that indeed the marriage between the Petitioner and the Respondent had irretrievably broken down. The incidents of cruelty narrated by the Petitioner, taken in totality, established to the required standard of proof on a balance of probabilities the matrimonial ground for divorce of cruelty. It was clear that the marital relationship between the Petitioner

and the Respondent had deteriorated to such extent that the couple has since stopped relating as husband and wife. They have been separated for more than five (5) years. This court therefore holds that the Petitioner established the ground of cruelty and desertion in her petition for divorce.

In the premises therefore, this court will grant the petition for divorce by the Petitioner. The marriage solemnized on 24<sup>th</sup> August 1994 between the Petitioner and the Respondent, at the Registrar's Office in Nairobi, is hereby dissolved. 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. As regards the issue of custody and maintenance of the children, the parties are at liberty to file an appropriate case before the Children's Court. There shall be no orders as to costs. It is so ordered.

**DATED AT NAIROBI THIS 9<sup>TH</sup> DAY OF MAY, 2014.**

**L. KIMARU**

**JUDGE**