



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MOMBASA**

**DIVORCE CAUSE NO. 12 OF 2010**

**G M K.....PETITIONER**

**VERSUS**

**C K K.....RESPONDENT**

**RULING**

By way of this Notice of Motion dated 20<sup>th</sup> May, 2013 the applicant prays that the petition dated 22<sup>nd</sup> February, 2010 be dismissed for want of prosecution. In the said petition the petitioner **G M K** had prayed for the dissolution of her marriage to the respondent, permanent custody of the four (4) children of the marriage and orders of maintenance. The respondent did enter appearance and did on 21<sup>st</sup> May, 2010 file his reply to the petition. I note that on 20<sup>th</sup> July, 1995 the same petitioner did file a suit in the High Court in Mombasa seeking a divorce. The petition was heard by **Hon. Justice S. O. Oguk (Retired)** who on 30<sup>th</sup> August, 1995 dismissed the petition. Ten (10) years later on 11<sup>th</sup> March, 2010 the petitioner again filed a petition seeking a divorce. The respondent raised a preliminary objection and argued that this present suit was '*res judicata*'. In my ruling dated 8<sup>th</sup> December, 2010 I dismissed the preliminary objection and ruled that the present suit was properly on record. However from that dated the petitioner has taken no steps to set her petition down for hearing. Counsel for the respondent did severally invite the petitioner to take dates for hearing but to no avail. The petitioner currently lives in Spain. It is now four (4) years since the suit was filed yet the petitioner has taken no steps to prosecute her petition. The prayers for custody of the four (4) children of the marriage and their maintenance appear to have become obsolete given that the children are all aged over 30 years and most likely do not require maintenance. The petitioner was duly served with a hearing notice for this present application but she did not appear in court neither did she send a lawyer to represent her. Clearly the petitioner has no interest in this petition. I see no valid reason why this suit ought to be kept alive. I do hereby dismiss the same for want of prosecution. No orders on costs.

**Dated and delivered in Mombasa this 1<sup>st</sup> day of September, 2014.**

**M. ODERO**

**JUDGE**

In the presence of:

No Appearance by either parties