



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MOMBASA**

**DIVORCE CAUSE NO. 31 OF 2013**

**L M J.....PETITIONER**

**VERSUS**

**K S M.....RESPONDENT**

**JUDGMENT**

The petitioner **L M M** filed in court this petition dated 24<sup>th</sup> October, 2013 seeking the dissolution of her marriage to the respondent **K S M**. The respondent on his part filed a reply to the petition dated 29<sup>th</sup> May, 2014. The parties both testified before the court on 8<sup>th</sup> September, 2014.

It is not in dispute that the petitioner and the respondent got married to each other on 17<sup>th</sup> December, 2009 at the Registrar's Office in Mombasa. A copy of their marriage certificate serial No. **[particulars withheld]** provides sufficient proof of the facts of the marriage. It is also not disputed that the couple bore no child together although the petitioner came into the marriage with an infant daughter whom the respondent accepted to raise as his own.

The petitioner told the court that after their marriage the couple lived in **[particulars withheld]** in Mombasa. At one time the younger sister of the respondent came to live with the couple. She revealed to the petitioner that the respondent had a wife and six (6) children in their rural home in Nandi. The petitioner insisted on them travelling to Nandi. There she confirmed from the respondent's parents that indeed he had a wife and children. The petitioner states that the respondent did not reveal this fact to her before they got married. She opted to move out of the matrimonial home with her child. She states that they only lived together for six months before she left.

On his part the respondent readily concedes that he has a customarily married wife in his rural home in Nandi with six (6) children. However he categorically denies having concealed this fact from the petitioner. He insists that he told the petitioner from the beginning that he was a married man and she accepted to become his second wife. The respondent claims that the petitioner became quarrelsome and abusive and took to heavy drinking. This led to disagreements between them and then the petitioner opted to move out of the matrimonial home. The respondent states that he has no objection to a divorce being granted.

Here is a case where the parties level accusations and counter accusations against each other. It is difficult for the court on the evidence availed to establish who was telling the truth. What is obvious is that the parties got married in December, 2009 but they only lived together for six months. By July, 2010 the petitioner had moved out of the matrimonial home to live on her own. From that time to date the couple have lived separately – a period of roughly four (4) years. The respondent told the court that he too seeks the dissolution of the marriage. Section 66 of the Marriage Act 2014 provides that a marriage may be dissolved in circumstances where it is shown to have irretrievably broken down. Section 66 (6) (d) provides that a marriage is deemed to have irretrievably broken down where

**“the spouses have been separated for at least two years whether voluntary or by decree of the court.”**

In this case the parties have lived apart for four (4) years. Each wants a divorce. Clearly the marital union has broken down. I allow the petition for divorce. Decree nisi to issue to be made absolute within three (3) months of today's date.

**Dated and Delivered in Mombasa this 10<sup>th</sup> day of November, 2014.**

**M. ODERO**

**JUDGE**

In the presence of:

Applicant in person

Court Clerk Mutisya