



H.S.M.....PETITIONER

VERSUS

H.K.R .....RESPONDENT

**JUDGMENT**

The petitioner filed her petition dated 9<sup>th</sup> March 2010 and prayed for the following orders:-

- (a) That the marriage celebrated between the petition and the respondent be dissolved.**
- (b) That the petitioner be awarded custody of the children of the marriage.**
- (c) That such further relief as the court may deem fit and necessary.**

The respondent equally filed a reply to the petition on 8<sup>th</sup> September 2010 as well as a cross petition praying for orders that:-

- (i) The marriage celebrated between the petitioner and the respondent be dissolved.**
- (ii) That the respondent be awarded custody of the children of the marriage.**
- (iii) That the petitioner be directed to provide maintenance for the respondent and the children of the marriage**
- (iv) Cost of the cross petition.**

When this matter came up for hearing the parties recorded consent on the issues relating to the children's custody as well as their maintenance. The consent was adopted as the Order of the court on 21<sup>st</sup> June 2012. The only issue pending was whether the prayers both in the petition or cross petition could be allowed.

It was the petitioner case that they entered into their union of marriage on 28<sup>th</sup> April 2002 under the tenets of Hindu customary law. They were blessed with two (2) children namely JSM born on 30<sup>th</sup> March 2003 and SKM born on 27<sup>th</sup> December 2006.

The petitioner averred that their marriage has not been peaceful. He said that the respondent has been cruel to him and very abusive. He said that the respondent has been abusive even in the presence of his parents and other relatives. He prayed for the dissolution of their marriage.

The respondent on the other hand had similar sentiments. At the time of testifying in court, the respondent has been separated with the petitioner for the last two (2) years. The respondent stays in Nairobi with the children whereas the petitioner stays in Kisumu. She prayed for their marriage to be dissolved.

Having heard both parties, it is clear from their pleadings and their testimony that the marriage between the two parties herein has irretrievably broken down. Both have accused each other of cruelty and desertion.

Consequently, it is clear that they have satisfied the cardinal grounds of divorce which include the element of cruelty. It is apparently clear that there is no love between the two herein. This court shall uphold the rule of law and more particularly the constitution which grants every person the liberty of freedom and choice. The law cannot force parties to live together especially in such a situation. In the premises I shall proceed to allow both the petition and the cross petition. The marriage between HSM and HKR solemnized on 28<sup>th</sup> April 2002 under the tenets of Hindu customary law is hereby dissolved and an order of decree Nisi is issued forthwith. I make no further orders in regard to the prayers sought as the consent earlier own mention has sorted the same. Each party shall bear their respective costs.

Order accordingly.

**Dated, signed and delivered at Kisumu this 13<sup>th</sup> day of July 2012**

**H. K. CHEMITEI**

**JUDGE**

*HKC/ao*