



Case Number:	div cause 1 of 02
Date Delivered:	17 Jan 2003
Case Class:	Civil
Court:	High Court at Mombasa
Case Action:	-
Judge:	Lawrence Peter Ouna
Citation:	L W M vs S H M ALIAS S M[2003] eKLR
Advocates:	-
Case Summary:	-
Court Division:	-
History Magistrates:	-
County:	-
Docket Number:	-
History Docket Number:	-
Case Outcome:	Application Allowed
History County:	-
Representation By Advocates:	-
Advocates For:	-
Advocates Against:	-
Sum Awarded:	-
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**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MOMBASA**

**DIVORCE CAUSE NO. 1 OF 2002**

**L W M.....PETITIONER**

**-VERSUS-**

**S H M ALIAS**

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

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

The couple were married on 23/10/90 under the marriage Act Cap. 150 Laws of Kenya and there are two children of the marriage namely:-

1. N M M – a girl born on 8/11/90.
2. H M - a boy born on 16th May 1996 .

Both children attend Aga Khan Junior Academy and Aga Khan Nursery in Mombasa respectively.

The petitioner is a Sales Marketing Manager with Golden Neo Life Diamite a manufacturing Firm of Health products for the last 4 years and is practically responsible for the up keep of the family.

The Respondent apparently does not contribute much income towards the maintenance of his family as he does not have a regular employment.

The Petitioner wants the marriage dissolved on the grounds of cruelty as particularized in the petition filed on 21/1/2002.

The Respondent did file a reply to Petition and cross petition alleging that the wife had deserted the matrimonial home and likewise prays for dissolution of the marriage and asks that this court grants him custody of the children.

At the hearing of this suit Mr. Kiume Kioko acting for the Respondent declared that he did not wish to take part in these proceedings where upon the court's consent was sought to let the matter proceed with formal proof.

The Petitioner's advocate was discharged and the matter proceeded with formal proof. The Petitioner told the court that the Respondent was now living an adulterous life and had completely abandoned his responsibilities to his family. He had physically evicted the wife from their matrimonial home and the petitioner was compelled to seek other refuge with friends and had now rented another house for herself and children.

I can only conclude that the Respondent has no intention to press on with his case as he failed to show up to offer his side of the story. This marriage appears to have hit the rocks and cannot survive.

Both children are young and have been abandoned by their father. It would be disastrous to grant their custody to their father. They need their mother's care and affection because of their tender ages. Since the marriage has irremediably broken down with little hope of reconciliation. I see no purpose to sustain it.

It is ordered therefore:-

1. That the marriage between the petitioner and the Respondent herein be and is hereby dissolved and a decree nisi shall issue.
2. The Petitioner is granted custody of the minor children namely N M M and H M.
3. The Respondent shall pay costs to the Petitioner – so be it.

**Dated at Mombasa this 17th Day of January, 2003.**

**L.P. OUNA**

**J U D G E**



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