



**REPUBLIC OF KENYA**

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

**DIVORCE CAUSE NO. 3 OF 2015**

**E M O .....PETITIONER**

**-VERSUS-**

**J O K .....RESPONDENT**

**JUDGMENT**

**A.** By the petition dated 21st day of December, 2015 and filed in the court on 20th January, 2016 the petitioner **E M O S**:

1. That on the 11th November 2008, the petitioner being a spinster and the Respondent being a bachelor, married and solemnized their marriage under the Registrar of marriage and issued with a marriage certificate.
2. That the said marriage was celebrated at the registrar's office at Nairobi on 11th November 2008.
3. That the said marriage was never consummated.
4. That during the subsistence of the marriage the respondent treated the petitioner with immense cruelty besides deserting the petitioner in many occasions.

**PARTICULARS OF DESERTION BY THE RESPONDENT**

1. Abandoning the matrimonial home without the consent of the petitioner.
2. The Respondent has totally failed to show love and affection to the petitioner but hurt and humiliation upon the petitioner

**PARTICULARS OF CRUELTY AND ADULTER BY THE RESPONDENT**

- 1 That failed to provide the petitioner with her conjugal rights for years.
2. Assaulting the petitioner on several occasions occasioning her both physical and psychological abuse
3. Being hostile and violent to the petitioner causing harm and even threatening to kill the petitioner.
- 4.Failure to exhibit of love and affection

5. Treating the petitioner in cruel and inconsiderate way.

6. That the Respondent is adulterous

7 Exposing the petitioner to emotional torture, public ridicule, humiliation and odium.

8. The Respondent created circumstances under which the petitioner could not reasonably expect to bear leading to their marriage irretrievably breaking down.

9. That the petitioner has tried to resolve the problem through their respective parents without success.

10. That the petitioner has tried reconciliation their respective parents with success

11. That the petitioner has lived alone for now for years and tried to reach the respondent but all in vain.

12. That the marriage has totally broken down and such can never live as husband and wife any more.

13. That there has not been any previous or pending proceedings between the petitioner.

**One point for determination**

1. Whether the marriage between the petitioner and the respondent has irretrievably broken down and should therefore be dissolved."

B. The court has carefully considered the petition filed and evidence adduced by the petitioner. The petitioner and the respondent solemnized their marriage under marriage **Act, 150 Laws of Kenya on 11th November 2008**. The petition however was filed on 23rd December 2015. Their separation is more than six years. This court thus finds that the petition here in competent having filed within the provisions of **Section 67 the Matrimonial Causes Act, Cap (152) of the Laws of Kenya**.

C. The events for dissolution of marriage are stipulated under **Section 8 (1) of the Matrimonial Causes Act**, thus:

(a) A petition for divorce may be presented to the court either by husband or wife on the ground that the respondent: -

(a) Has since the celebration of marriage committed adultery or

(b) Has deserted the petitioner without cause for a period of at least three years, immediately preceding the presentation of and the Respondent with regard to marriage is that the petitioner has neither connived at nor condoned the Respondent's cruelty and desertion outlined above.

14. That this petition is neither presented nor prosecuted in collusion with the Respondent.

15. That this Honourable court has jurisdiction to hear and determine this matter.

D. That thereafter the petitioner prays for 1) the marriage between the petitioner and the Respondent be dissolved forthwith.

(i) **Costs of the petition**

E. That the respondent, J O K was served with the petition, summons, verifying affidavit on 17th December, 2015 which he accepted but declined to sign. This was filed in court on 20th January 2016.

F. PW1 -E M O in her testimony testified to all the allegations stated above. She was represented her cause in person.

The respondent did not appear nor did he give any evidence of the petition on

(c) has since the celebration of marriage treated the petitioner with cruelty or

(d) is usually of unsound mind and has been continuously under care and treatment for a period of at least five years immediately preceding the presentation of the petition and by the wife on the grounds that her husband has since then celebration of the marriage been guilty of rape, sodomy or bestiality.

H. It is alleged by the petitioner that since the celebration of the marriage the Respondent deserted the petitioner and has also treated her with cruelty.

I. I am therefore satisfied that the respondent deserted the matrimonial home without reasonable cause. I also find, unjustifiably, that cruelty has been proved within the parameters considered in the **1977 case of N .vs. N [2008] 1 KLR (G &F)** wherein **Madam, J (as he then was)** held, inter alia, that:

**"Whenever cruelty as a matrimonial offence has been established is a question of fact and degree which should be determined by taking into account the particular individuals concerned and particular circumstances of the case matter than by any objective Standards."**

I therefore convinced that the marriage herein has broken down irretrievably even though the petitioners did not call any witness.

J. In the circumstances, I find that the marriage herein is dead and see no reason why the court should not grant the order sought as it is obvious to the likelihood as the reunion is remote.

K. Accordingly, I hardly pronounce decree of divorce and order that the marriage solemnized on 11th November, 2008 at the registrar of marriages be and is hereby dissolved. Decree Nisi shall issue forthwith and the same shall be made absolute after the expiry of a period of (3) days from the date hereof.

The costs of this petition shall be borne by the respondent.

It is so ordered.

**Dated at Nyamira this 1<sup>st</sup> day of April 2016.**

**C. B. NAGILLAH**

**JUDGE**

**In the presence of:-**

E M O petitioner in person

N/A respondent

Mercy court clerk



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