



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT ELDORET**

**DIVORCE CAUSE NO. 6 OF 2009**

**IN THE MATTER OF THE MATRIMONIAL CAUSES ACT (CAP 152)**

**AND**

**IN THE MATTER OF THE AFRICAN CHRISTIAN MARRIAGE AND DIVORCE ACT (CAP 151)**

**BETWEEN**

**EJL.....PETITIONER**

**AND**

**BKK.....RESPONDENT**

**JUDGMENT**

1. The Petitioner approached the court seeking a divorce by way of petition filed on 21<sup>st</sup> May 2008.
2. The Respondent was served with the petition and hearing notice on 28<sup>th</sup> May 2009 and received the same but declined to sign on the return copy.
3. The Petitioner wedded the Respondent on 6<sup>th</sup> December 1997 at [Particulars withheld] Church in Iten.
4. The Petitioner avers that after their marriage the Respondent began to be cruel and continued like that for 10 years. He refused to work and claimed he had been called by God. He sold land belonging to the Petitioner by force claiming that it was bearing his name and not hers.
5. During the sickness of the Petitioner in 2006 the Respondent was not there to sign for the operation and did not participate in paying the bills.
6. The Petitioner left the Respondent on 21<sup>st</sup> March 2008 when his cruelty became unbearable. The Petitioner avers that the Respondent has sold every property of value in the home and has continued to nag and abuse the Petitioner.
7. The Petitioner prays for the dissolution of their marriage and for the divorce to be granted. Further, that the Respondent pays costs incurred.

8. The petition is unopposed as the Respondent has never filed any response to the same.

9. The petition was heard on 11/11/2021 in the absence of the respondent. The Petitioner gave *viva voce* evidence restating the contents of the Petition are praying for divorce. Their marriage have no children, and they do not have any property.

#### **ISSUES FOR DETERMINATION**

1. Whether the marriage should be dissolved

#### **WHETHER THE MARRIAGE SHOULD BE DISSOLVED**

10. Section 8 of the Matrimonial Causes Act provides;

**8 (1) A petition for divorce may be presented to the court either by the husband or the wife on the ground that the Respondent—**

**(a) has since the celebration of the marriage committed adultery; or**

**(b) has deserted the Petitioner without cause for a period of at least three years immediately preceding the presentation of the petition;**

**or**

**(c) has since the celebration of the marriage treated the Petitioner with cruelty; or**

**(d) is incurably 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**

10. The Petitioner herein relies on the ground of cruelty. It is sufficient to establish just one of the ingredients as there is no requirement that all four must be established. The Respondent has not controverted the allegations of cruelty. The standard of proof is on a balance of probability and I find that the same has been satisfied.

11. The Petition for divorce is therefore successful and orders issue as follows:

- a) That the said marriage is dissolved.
- b) A Decree *nisi* to issue.
- c) Costs herein to be paid by the respondent.

**DATED AND DELIVERED IN ELDORET THIS 8<sup>TH</sup> DAY OF NOVEMBER ,2021**

**E. OGOLA**

**JUDGE**



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