



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)**

Divorce Cause 38 of 2005

M.W.M..... PETITIONER

VERSUS

A.K.H..... RESPONDENT

JUDGMENT

The Learned Deputy Registrar properly certified this cause as an undefended cause after observing that proper service was effected upon the Respondent who failed to enter appearance.

The Petitioner got married to the Respondent on 30th April, 1999 (under the Marriage Act Cap.150 Laws of Kenya) as evidenced in a copy of marriage certificate annexed to the petition and marked as exhibit "A". This marriage was blessed with one son named I.J who was born on 14th November, 1999.

The Petitioner testified that she seeks a divorce on the ground of cruelty on the part of the Respondent. In proof of her averments, she testified that subsequent to the marriage, the parties lived and cohabited as husband and wife at [particulars withheld] in Nairobi for one year. Both parties are residents and domiciled in Kenya.

As per Petitioner's testimony problems arose in the marriage just a few months into the marriage. During her pregnancy the Respondent gave no support and went to the extent of just watching and allowing the Petitioner to carry a pale of water up six (6) floors during her seventh month of pregnancy.

The Respondent exhibited total lack of support and provided nothing for the family as a husband compelling the Petitioner to find a job (employment) while she was six months pregnant. I do note that despite the Respondent being in employment as a sales manager, he gave no financial support to his family thus neglecting his duty as a husband. The Petitioner had to seek means and ways to see that her needs were met.

Worse still when the issue of this marriage was 4 months old, due to non-payment of dues by the Respondent, auctioneers attached and carried away all household goods leaving the Petitioner totally helpless. The Petitioner was emotionally injured and had to seek shelter at her parents' home when the Respondent failed to cater for safety and welfare of the Petitioner and their child. She emphasized that she has lived as a single mother even in her one year of marriage.

Since the year 2000 the Respondent has not bothered to go back to his family and has totally neglected and forgotten the family

The Petitioner did suffer mentally and emotionally due to the cruelty meted on her by the Respondent. It is not in doubt, as per her uncontroverted evidence, he has failed, refused and neglected to maintain the Petitioner and their child. The averments of cruelty deponed by the Petitioner and which are uncontroverted, cannot be termed as normal wear and tear of the marriage life. Those acts wherein the Petitioner was not accessory amounted to cruelty in law.

I do note that a settlement deed for the maintenance of the issue of this marriage has been executed eventually and the Petitioner wishes not to seek maintenance for herself. She, of course, prays for custody, care and control of the minor (issue of the marriage).

The evidence before me has satisfied the required standards, of proof of acts of cruelty in matrimonial cases, which is between the balance of probability and beyond reasonable doubt. I am also satisfied that the marriage herein has irretrievably broken down as a result of the aforesaid acts of cruelty on the part of the Respondent. I keenly observed the Petitioner's demeanour and I have formed an opinion that she was an honest witness and thus her uncontroverted evidence is accepted by me to be the basis for this judgment.

I am also satisfied that there is no collusion in presenting or prosecuting of this petition between the parties.

The Respondent has also abandoned the minor child of tender age who has always been taken care of solely by the Petitioner and thus she is entitled to his sole custody as per the law.

The upshot of the above is that I order:-

- 1. The marriage in fact solemnized between the Petitioner and the Respondent herein be dissolved.**
- 2. The custody, care and control of the issue of the marriage namely I.J, referred to herein before is granted to the Petitioner.**
- 3. The *Decree nisi* be made absolute within 90 days from the date hereof.**

The Petitioner did not ask for the costs of this cause and I thus do not make any orders thereon.

Dated and signed at Nairobi this 27th day of July, 2006.

K.H. RAWAL

JUDGE

27.7.06



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