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Case Class:	Civil
Court:	High Court at Malindi
Case Action:	Judgment
Judge:	N/A
Citation:	P.G v M.P.S [2008] eKLR
Advocates:	-
Case Summary:	..
Court Division:	Family
History Magistrates:	-
County:	-
Docket Number:	-
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Case Outcome:	-
History County:	-
Representation By Advocates:	-
Advocates For:	-
Advocates Against:	-
Sum Awarded:	-

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**P.G.....PETITIONER**

**VERSUS**

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

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

P.G has petitioned for divorce against M.P.S.

The parties were married on 5<sup>th</sup> May 2001 at the District Commissioner's office Malindi as per the marriage certificate produced as Ex-1.

They cohabited within Malindi District.

The petitioner is an Italian citizen domiciled in W, Kenya and working at H.Resort in W, whilst the Respondent is a Kenyan citizen domiciled in W, working at a beauty parlour.

There is one issue to the union, namely S.G born on 27<sup>th</sup> September 2005.

The petitioner complains that since the celebration of the marriage, the respondent has treated him with cruelty and in the year 2003, without any justification, the respondent begun disappearing from the matrimonial home for days, and sometimes weeks, without any explanation and/or information as to her whereabouts.

One night the respondent got home at 3.00am and after an argument with the petitioner, she attacked and wounded him with a knife. The petitioner reported the incident to W Police Station, where after the respondent was arrested and detained for one night. The respondent falsely claimed that the petitioner had her locked up at the police station so that the petitioner could have sex with her sisters. The petitioner did not press charges against the respondent. The respondent hardly went home and this forced the petitioner to always leave the door partly locked for easy access when she returns home. As a consequence, the petitioner was attacked by a gang of thieves armed with metal bars, bows, arrows and large knives demanding for money.

In June 2004, after the matrimonial home burnt down, the respondent left the petitioner and only returned after being aware that the petitioner had borrowed money to rebuild the house. On or about April 2008, the respondent was arrested by police for writing a text message to a person he believed to be her sex companion in which she threatened to kill the said man and when the said man's wife read the message, she reported to police and respondent was arrested.

Petitioner complains that respondent is unappreciative and unreasonable in her demands for instance:

(a) On diverse dates between 2003 and 2008, she demanded money which the respondent gave her, and which she spent outside the matrimonial home.

(b) On two separate occasions, she demanded Ksh. 60,000/- and then Ksh. 40,000/- to allegedly buy two separate plots but she has since refused to produce the title deeds for the plots.

He also states that he has been incurring a lot of expenses and loss due to the respondent's

extravagance and misappropriation.

The respondent has single handedly raised the telephone bill to an unreasonable amount and on several occasions the petitioner has given respondent between ksh 15,000 – 30,000/- as house keeping money for a month, but the respondent used the money with days.

The petitioner established a business worth ksh 265,000/- for the respondent and an account at the bank which had a minimum deposit of Ksh. 40,000/-. The respondent has already misappropriated  $\frac{3}{4}$  of that deposit and she continue to spend the money she makes from the business to support her miraa addiction.

The respondent has stolen two expensive mobile phones belonging to the petitioner, broken another and one also damaged the landline. She falsely accuses the petitioner of having extramarital relations with unspecified women.

Other instances of unreasonable behaviours include chewing miraa for most of the night then at about 4.00am, she would wake up the petitioner and demand to have sex. Whenever the petitioner was unable to have sex, the respondent would accuse him of infidelity alleging that his failure and alleged disinterest in sex was due to his extra marital relations with other women.

In the year 2006, a year after the child to the union was born, the petitioner developed complications that led to an operation in February 2007. As a result, the petitioner was bed-ridden for a month and during that, the respondent became cruel threatening the petitioner's life, accusing him of infidelity and threatening to have him deported.

In February 2008, the petitioner asked some of his employees to go to Timboni to buy him a pair of sandals as his shoes had broken and when the respondent saw the shoes, she alleged that the petitioner received the shoes from his girlfriend. She threatened the petitioner with a knife and cut up the shoes.

On 25<sup>th</sup> May 2008, the respondent attacked the petitioner while he was asleep claiming that he had gone to Nairobi under false pretext that he was there on business yet he was there with an alleged girlfriend who was financially dependent on him.

On 28<sup>th</sup> May the respondent chewed miraa as normal and when the petitioner failed to respond to her advances when she came to bed at 2.00am, she left the house and returned at around 5.30am.

Petitioner further states that the respondent's constant bickering has affected his job, resulting in his always being late for work and whenever the respondent arrives home even five minutes late, she accuses him of infidelity.

The respondent constantly changes house girls, alleging that the petitioner is intent on having sexual intercourse with them. The respondent has refused to attend to household duties and her constant outbursts are negatively affecting the child of the marriage as well as the petitioner.

On 20<sup>th</sup> June, the respondent went into the bedroom where the petitioner was sleeping at about 2.30am, whereupon she emptied the petitioner's wardrobe of all its contents while accusing the petitioner of infidelity with undisclosed women.

On 28<sup>th</sup> June 2008, the petitioner informed the respondent that he would file for divorce, and she

became enraged, grabbed the child who was asleep in bed thereby waking her up and upsetting the child terribly. The respondent then slid her arm on the cabinet top, knocking everything off, including cameras, watches and photo developing equipment. When the respondent tried to take photos of the mess using his phone, the respondent forcefully tried to take the phone from him.

The respondent chews miraa every night and when she mixes it with alcohol, she loses all decorum, becomes violent both to the petitioner and anyone whom she perceives to be unresponsive to her. She becomes helpless and incapable of taking care of the child of the marriage. As the petitioner is employed and the respondent is engaged in business, the child of the marriage is mainly in the hands of the ayahs whom the petitioner employs for that purpose. Yet those ayahs are not able to work for long due to the respondent's actions and wild allegations of intended sexual advances by the petitioner, which always drives them away. The petitioner believes that it is in the best interest of the child that he be granted custody of her.

Due to the ongoing incidences of cruelty complained, petitioner states that he cannot be reasonably expected to continue living with respondent and that the marriage has irretrievably broken down. He therefore prays that:

- a) his marriage to the respondent be dissolved.
- b) He be awarded custody of the child of the marriage, namely S. G, and in the alternative, appropriate orders setting out the petitioner's right of access to the child be made.
- c) That costs of his petition be provided for

The respondent failed to file any answer to the petition and so the matter proceeded as an undefended cause.

The petitioner in his evidence described himself as a project manager at [particulars withheld] and his description of his wife's lifestyle seems like one endless night party filled with drinking alcohol and chewing miraa and always spoiling for a fight. She seems to have a withdrawal account on his emotions and finances but never depositing anything positive or beneficial to the petitioner. When he got her arrested after attacking him and then dropping the charges, respondent left the police station promising she would not repeat her behaviour and said she was sorry. However her ill behaviour carried on, always leaving and returning at her own will.

During one of her disappearing acts, sometime in 2004, the respondent resurfaced looking very sick and petitioner took her to the doctor and she was diagnosed with a sexually transmitted disease (which she claimed had been given to her by petitioner but which petitioner says is not true). Respondent has kept on saying she is not satisfied with their marriage. She seems to be given to frequent moments of violence and vitrol, always making allegations against the petitioner.

When petitioner developed a hernia and was advised by the doctor to avoid any strenuous exercise including sex, the respondent disbelieved him, saying he was making it up because he had other women.

Respondent's fits of rage and violence always take place in the presence of the child who would become very frightened and start crying. Petitioner sees a nexus between the substance abuse and the violence but says respondent has rejected all attempts at any professional help.

Every night when she gets drunk, she leaves petitioner with the 3 year old child. He explained that although he had set up a business for respondent, she has mismanaged it to the extent that she would not be having any money to take care of the child, were she is to be granted custody.

Petitioner denied condoning the cruelty. What about the times that respondent has physically attacked him" He says he is not the type to hit back.

From the evidence, which is uncontroverted, the petitioner has demonstrated a series of consistent cruel acts by the respondent. It is totally unacceptable that a married woman would leave her matrimonial home at night, leaving her husband and three year old child and only return in the wee hours of the morning completely drunk. Respondent does not seem keen in sharing any parental responsibility and given the conduct described by the petitioner – especially her miraa and alcohol binges, I have no doubt in my mind that it would not be in the best interest of the child to leave her with the respondent – at that young formative age she needs a stable and focused environment.

The acts by respondent amount to both physical and psychological cruelty it's bad enough to have constant outburst of unfounded allegations but when these are accompanied by physical violence, then definitely that is not a situation than can be restructured.

The petitioner has demonstrated that the marriage has broken down irretrievably due to acts of immense cruelty by the respondent and I will grant his prayer and order that the union between P.G and M.P.S be and is hereby dissolved.

- 1) A Decree Nisi shall issue to be made absolute at the expiry of 6 months.
- 2) (a) Custody of the issue to the marriage S.G is given to the petitioner.  
(b) The respondent is at liberty to apply for and propose for, visiting rights if she so desires.
- (3) Each party bears its own costs.

Delivered and dated this 4<sup>th</sup> day of December 2008 at Malindi.

**H. A. Omondi**

**JUDGE**



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