



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MACHAKOS**

**Coram: D. K Kemei-J**

**DIVORCE CAUSE NO. 1 OF 2014**

**BETWEEN**

**SML.....PETITIONER**

**-AND-**

**ANG.....RESPONDENT**

**JUDGEMENT**

1. The Petitioner herein **SML**, a Kenyan, married the Respondent **ANG**, also a Kenyan citizen on 6<sup>th</sup> August 2005 at the Gospel Outreach Church in Laikipia District, Rift valley Province.

2. The Petitioner and the Respondent were blessed with one issue namely, **PJI** born 16<sup>th</sup> September 2007.

3. The Petitioner filed this Petition, praying that his marriage to the Respondent be dissolved, on the grounds of cruelty, adultery and desertion as particularized in paragraph 7 of the Petition.

4. The particulars of the grounds were as follows:

**i. Cruelty-** The Respondent habitually becomes wild and violent.

The Respondent frequently had the desire to have physical fights.

The Respondent is a habitual liar.

**ii. Adultery-** The Respondent refused to consummate the marriage.

The Respondent spent most of her time with private friends away from the Petitioner.

**iii. Desertion-** The Respondent abandoned her matrimonial home to stay on her own for a period of 3 years.

5. The Respondent was served with the Petition at Nanyuki on 22<sup>nd</sup> July 2014. She did not enter appearance or file any papers in response thereto 5 years down the line.

6. The Petitioner proceeded to file in Court Chamber Summons Application dated 28<sup>th</sup> November 2019, filed in court on 29<sup>th</sup> November 2019. It seeks the following relief Orders:

**i. That** for reasons shown, the application be Certified as Urgent, its service be dispensed with and the same be heard ex-parte for purposes of prayer no.2 and 3 herein below.

**ii. That** this Honorable Court do issue Registrar Certificate and give directions whether the pleadings are in order.

**iii. That** the time to answer to the Petition in pursuance of the Matrimonial Causes Rules has lapsed.

**iv. That** such other and/or further Orders do issue in the interest of justice.

**v. That** the costs of this application be provided for.

7. The Respondent was absent during the hearing of the Application and did not file any pleadings. The court duly granted the application and set the matter down for hearing.

8. During the hearing, the Petitioner testified that after their union in 2005, in Nanyuki, and later moving to Machakos, Athi River, he cohabited with the Respondent for five years. During those years, the Petitioner was violent and abusive. In 2012, she deserted their matrimonial home

9. In 2015, the Petitioner relocated to Germany where he has been residing to date.

10. The Petitioner noted that, he has been taking care of his son who is currently living with the Respondent and is ready to continue with his parental duties even after the divorce.

11. I find that the particulars of the grounds for divorce as presented do suffice to lead me to conclude that the marriage between the petitioner and the Respondent has irretrievably broken down. I see no evidence that the Petitioner has condoned the actions of the Respondent. I find that the Petitioner deserves the decree sought not only to restore his dignity as a human being, but also free him to pursue his life without the fear of further emotional abuse, and to give him a healthy environment in which to nurture his new relationship. I am satisfied that the Petitioner has proved his case to the required standards and that the same has not been presented in collision with the Respondent. Indeed, the respondent is said to have deserted the petitioner since 2012 and that they have been living separately. It is clear to me that the marriage if any is just but an empty shell and that there is no reason to sustain it since the parties have moved on with their lives. It is noted that the respondent has not filed any response to the petition or participated in the trial.

12. In the result, I find merit in the petition. The same is allowed in the following terms:

**a. The marriage solemnized between the petitioner and the respondent on the 6.8.2005 at Gospel Outreach Church Laikipia is hereby dissolved.**

**b. A decree Nisi is to issue which shall become absolute upon expiry of three months from the date hereof.**

**c. The Respondent is awarded the custody of the issue of the marriage PJI.**

**d. The Petitioner is granted visitation rights to the child upon consultation with the Respondent and to continue performing his parental obligations such as upkeep, education and medical expenses.**

**e. There will be no order as to costs.**

It is so ordered.

**Dated and delivered at Machakos this 23<sup>rd</sup> day of February, 2021.**

**D. K. Kemei**

**Judge**