



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

DIVORCE CAUSE NO.222 OF 2012

M W C.....PETITIONER

VERSUS

X S SRESPONDENT

JUDGMENT

1. The Petitioner has filed a petition dated 16th November 2012 seeking the dissolution of her marriage to the respondent. She avers that they got married on the 7th day of March, 2009. That since their celebration of their marriage they resided in 11 *[particulars withheld]* Place, Hurlingham Manor, Sandton, 2196 in the Republic of South Africa until the time of separation on July 31st 2012. That they have two living issues born prior to the marriage namely **W S S** born January 27, 2005 and **K Z S**, born June 26, 2008. That the petitioner is currently working for gain as a lawyer in Nairobi and is domiciled in Kenya. That the Respondent is based in South Africa. That the respondent has since the celebration of the marriage persistently treated the petitioner with cruelty.

2. Particulars of Cruelty

- a. The Respondent on several occasions treated the petitioner with disrespect causing the petitioner distress.
- b. The respondent on several occasions incited her relatives against the petitioner causing the said relatives to rudely accost and verbally assault the petitioner.
- c. The respondent on several occasions neglected his matrimonial and paternal duties both towards the petitioner and the issues of marriage.
- d. The respondent continuously told lies to the petitioner thus destroying the trust that existed between the petitioner and the respondent.
- e. The respondent is a person of unpredictable tempers who has angrily shouted at the petitioner in public using uncivilized language thereby embarrassing the petitioner and causing her profound distress.
- f. The respondent has been keeping the company of women of questionable character leading to the apprehension on the part of the petitioner as to her continued healthy living as well as bringing dishonor to the family.
- g. The respondent has been deliberately wasteful of the family property and finances.
- h. The respondent has deliberately refused to communicate with the petitioner as is expected of spouses.
- i. The respondent has threatened the petitioner with physical and sexual violence.
- j. The respondent has had a bad and long standing and continuing infidelity with one immoral woman and/or women of loose moral character Ms. L C N D for over three years and with whom he continues to commit adultery in public and in the petitioner and respondent's Common marital bed.

- k. The respondent on or about July 31, 2012 engaged the petitioner in a physical assault culminating in the respondent beating and throttling the petitioner repeatedly in the bedroom, children’s bathroom and living room in front of the domestic worker as well as in sight and within ear shot of the two minor children.
 - l. The respondent has been using insulting language in the presence of the children and such words as “Slut” being the last words they heard him use towards their mother.
 - m. The respondent has been drinking irresponsibly and endangering the life of the minor children including failing asleep with W in the car in the middle of the night when the petitioner was 8 months pregnant with K and in bed rest.
 - n. The respondent has been behaving in a drunk and disorderly manner in front of the children, the petitioner, friends and family and bringing great shame and embarrassment to everyone.
 - o. He has been declining to seek professional help to assist with his abuse of alcohol despite warning from friends, family and the couple’s marriage counselor that the impact behavior is negatively affecting the stability of the family.
 - p. He has been hurling abusive words at the petitioner including “slut” “Idiot” and “Bitch”
 - q. Due to his violent nature, the children describe him as being “scary “ and have said on more than one occasion that “ Daddy is very Scary”
3. The matter proceeded as an **undefended** suit. The petition has testified that they married in the years stated in the petition and had two children and they lived together until the end of July, 2012. That during their marriage the petitioner was physically violent and tried to kill her. She left with the children and returned to Kenya from South Africa. She does not know where the respondent works and she relies on particulars of cruelties as stated in her petition as her evidence. That one emotional cruelty was that he will bring his mistress to their home and threat to kill her. Some of their indifferences were displayed in front of the children. She was granted custody of the children and granted orders for the maintenance. An attempt to reconcile them did not bear any fruits and there is no possibility of their reconciliation.
4. The petitioner’s evidence was not challenged. She has narrated the incidences of cruelty in her petition and testified that she was verbally assaulted. That the respondent neglected them, he was a man and unpredictable tempers wasteful and threatened her. That on July, 31st 2012 the Respondent engaged her in a physical assault culminating into beating and throttling in the bedroom, children’s bathroom and living room. That the Respondent used insulting language in the presence of children like slut and he drunks irresponsibly.
5. The above incidence as narrated caused the Petitioner emotional stress and amounts to cruelty. It is her evidence that she had to leave her matrimonial home for fear of her life and her children .Cruelty is a ground of divorce under the Matrimonial Clause Act and also under the Marriage Act. The petitioner’s marriage with respondent has broken down irretrievably. On the ground of cruelty I dissolve the marriage between the petitioner and the respondent celebrated on the 7th of March, 2009. A decree *nisi* to issue and to be made absolute within 30 days. No orders as to cost. It is so ordered.

Dated, signed and delivered this **22nd** day of April **2016**.

R. E. OUGO

JUDGE

In the presence of:

..... **For the Petitioner**

..... **For the Respondent**

Charity Court Clerk