



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MALINDI**  
**DIVORCE CAUSE NO. 25 OF 2014**

**M J K.....APPLICANT**

**VERSUS**

**P G K.....RESPONDENT**

**JUDGEMENT**

In her petition dated 18<sup>th</sup> December 2014, the petitioner is seeking to have her marriage to the respondent dissolved. Several grounds for the divorce are stated in the petition including cruelty and desertion. The respondent filed his answer to the petition and a cross petition seeking to have the marriage between the two dissolved. The respondent is alleging cruelty as the main ground of the cross petition.

In her testimony in court, the petitioner stated that she got married to the respondent on 22<sup>nd</sup> August 1991 at the Mombasa Registrar of Marriages office. They have been married for 25 years. The two never had a child together although she has a daughter while the respondent has children from subsequent marriages. They lived at her own house at Kilifi until 1999 when her husband took a second wife. It is her evidence that the respondent now has four wives. Since 1999 the respondent denied her her conjugal rights and since then they have never had sex.

It is the petitioner's further evidence that she bought some plots and the respondent has been selling them behind her back. The respondent is not always at home and whenever he goes home he asks for money. At the time of the marriage she was 55 years and had divorced her previous husband. The respondent was 24 years old when they got married. It is her evidence that the respondent never used to work. He later engaged in land brokerage. She denied that at one time she threw out the respondent from the house through the assistance of the police.

In his evidence, the respondent testified that it is true they got married in 1991. By then he was 24 years old and working as an accountant earning Kshs.10,000/= per month. The petitioner had problems with her previous husband and she filed for divorce. After her divorce was granted, they became friends and initially lived in Likoni, south Coast before moving back to Kilifi. He was excited by the marriage as he thought he would go and work in Europe. The petitioner was a pensioner then and he was promised to get part of the pension. It is his evidence that the petitioner has been cruel on him. Whenever he decides to cook food in the house, the petitioner would decline.

According to the respondent, it is the petitioner who asked his mother to get him a young lady as she couldn't give birth. His mother brought him a young lady who was not his type but he decided to stay with her so as to satisfy his mother. They got two children and the petitioner has been supporting his children. At the end of each month they kept quarrelling over money. In 2014, while at the Kilifi lands office police officer called him. He went home and the petitioner threw out his personal belongings and told him that she did not want to see him. He is also seeking divorce. They have not had sex for the last ten (10) years.

The main issue for determination is whether the marriage between the two should be dissolved. Each of the two parties is seeking dissolution of the marriage. The two parties have never had intimate relationship for the last ten (10) years. It is clear that the respondent has taken other women during the

existence of the marriage. The respondent conceded that his mother brought him another wife and they had two children. That wife left. He also had one M as his wife. They parted and he got one K . Currently he has M as his wife. It is his evidence that the petitioner allowed him to marry another wife.

On her part, the petitioner contends that since 1999 the respondent denied her her conjugal rights. The respondent now has four wives. She would like to be left free and live her own life.

Although both parties dwelt on the issue of properties and the petitioner's visa, I do find that that evidence may not be relevant in a divorce petition. Whereas the petitioner alledged that she is the one who bought some of the properties, the respondent maintains that some of the properties are his and some belong to his father who was a chief. There is also the contention that the petitioner being a Swiss national, could not have obtained a residence permit had she not gotten married to the respondent. On her part, the respondent maintain that she divorced her former Muslim Kenyan husband and stayed in Kenya for one year before getting married to the respondent. The marriage was not the source of her obtaining a Kenyan residence permit.

Given the evidence herein, I do find and hold that the marriage between the two has reached its dead end. There is no hope of reviving each other's feelings and have the parties reconcile. The respondent has moved on and has taken over another wife. Each party would like to have the marriage dissolved and start his/her life afresh. The two cannot be reconciled in view of the accusations and counter accusations. I do find that the marriage cannot be redeemed and has to be dissolved so that each part can move on with his/her own life. The petitioner has proved that she was denied her conjugal rights for almost ten years. Since 1999 the two parties have been living separate lives. The marriage only existed on paper. The respondent has been taking other wives while his marriage with petitioner is existing. There is an element of cruelty in this.

In the end, I do find that the petition and cross petition have been proved. The marriage between the petitioner and the respondent is hereby dissolved. A decree nisi shall issue to become absolute after three (3) months hereof. Each party to meet their own costs.

**Dated and delivered in Malindi this 27<sup>th</sup> day of July, 2016.**

**S.J. CHITEMBWE**

**JUDGE**