



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**DIVORCE CAUSE NO. 85 OF 2014**

**BETWEEN**

**A M T .....PETITIONER**

**AND**

**A N K.....RESPONDENT**

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

1. On 23<sup>rd</sup> November, 2002 the Petitioner then a bachelor known as A M T was lawfully married to the Respondent A N K then a spinster and a certificate Serial No. [particulars withheld] issued to them in accordance with the **Marriage Act Cap 150 Laws of Kenya**. The marriage was celebrated in Nairobi and thereafter they cohabited as husband and wife in Kilimani, Nairobi. There is one issue of the marriage namely H O N aged 8 years.

2. At the time of filing the Petition both the Petitioner and Respondent were domiciled in Kenya where the Petitioner works as a journalist while the Respondent is a Purchasing officer.

3. The Petition filed on 24<sup>th</sup> April, 2014 is premised on grounds of cruelty said to have been occasioned by the Respondent against the Petitioner. Upon being served with the process, the Respondent filed her Amended Answer to the Petition. She subsequently filed a cross petition and denied all the grounds advanced by the Petitioner, calling the Petitioner to strict proof thereof. In the cross petition she too prayed that the marriage between the Petitioner and the Respondent be dissolved.

4. On 21<sup>st</sup> April 2016, the Deputy Registrar certified that the matter was suitable to proceed for hearing as a defended cause for one day in Nairobi. At the hearing on 30<sup>th</sup> June, 2016, the Petitioner testified and reiterated what he had set out in the Petition. The Respondent did not take the stand to testify but her Answer to the petition and the cross-petition were adopted in evidence.

5. With regard to the acts of cruelty, the Petitioner accused the Respondent of having been antagonistic, unreasonable towards the Petitioner and ignored his wellbeing. That the Respondent had exhibited utmost disrespect towards the Petitioner. That as a result of the aforesaid behaviour and cruelty the Respondent has forced the Petitioner to become a social recluse and has suffered untold misery, mental anguish and stress, embarrassment and exceptional hardship.

6. According to the Petitioner the consequence of the Respondent's attitude towards the marriage is

that they have totally failed to have cordial relationship because of hostility, disrespect and lack of support. The Petitioner asserted that he has been separated from the Respondent from February, 2012 to date because the relationship had caused him immeasurable suffering severe stress and emotional distress.

During the hearing, the Petitioner told the court that due to the aforesaid acts of cruelty he and the Respondent could not continue to hold out as husband and wife. He, therefore, asked the court to dissolve the marriage between him and the Respondent.

7. 8. In her Cross-Petition, the Respondent stated that the Petitioner had, during the subsistence of the marriage, deserted the Respondent of his own volition leaving her without a companion. She complained that the Petitioner had failed to maintain her and the issue of the marriage and denied the Respondent her conjugal rights while he openly engaged in illegal and unlawful adultery with several women including cohabiting with one H A. The Respondent asserts that the marriage between her and the Petitioner has irretrievably broken down and incapable of redemption.

9. Further, the Respondent prayed that she be granted both legal and actual custody of the issue of the marriage. That she may also be granted alimony pending hearing and determination of the suit. That the Petitioner be ordered to maintain and adequately provide for both the Respondent and the issue of the marriage, that she be granted maintenance for herself and the child. That the Petitioner be condemned to pay the costs of the cause.

10. I have perused the grounds of the Petition, the Answer thereto and the grounds of the Cross-petition. I have also considered the oral evidence of the Petitioner as tendered in court. What is not disputed is that the parties have lived apart for the last three years and there has been no attempt at reconciliation by either side. It is also clear that there are irreconcilable differences between them and both parties want the marriage celebrated between them to be dissolved.

11. They confirm that this Petition has not been presented or prosecuted in collusion, neither have they connived or condoned the matrimonial offences which each has complained of. They both certify that there have been no previous proceedings filed regarding the marriage.

12. From the foregoing I make a finding that due to the matrimonial offences set out above and which have been proved on either side on a balance of probabilities, the marriage between this two parties remains in-existence on paper only. The marriage celebrated between the parties herein on 23<sup>rd</sup> November, 2002 has broken down irretrievably and cannot be salvaged. At least, there is no will on either side to salvage it.

In the premise I make the following orders:

- a. That the marriage celebrated between the Petitioner and Respondent in Nairobi on 23<sup>rd</sup> November, 2002 is hereby dissolved.
- b. That Decree nisi dissolving the said marriage is hereby issued to be made absolute thirty (30) days from the date of this judgment.
- c. That the maintenance and custody of the minor issue of the marriage be determined by the lower court.
- d. The issue of alimony pendente lite divorce has been overtaken by events the divorce having been granted.
- e. There shall be no orders as to costs.

**SIGNED DATED and DELIVERED** in open court this **21<sup>st</sup>** day of **July, 2016**.

.....

**L. A. ACHODE**

**JUDGE**

**In the presence of .....Advocate for the Petitioner**

**In the presence of .....Advocate for the Respondent**