



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NYAMIRA**  
**DIVORCE CAUSE NO. 2 OF 2015**  
**IN THE MATTER OF MARRIAGE ACT 2014 LAWS OF KENYA**  
**AND**  
**IN THE MATTER OF DIVORCE PROCEEDINGS**  
**BETWEEN**  
**D N O.....PETITIONER**  
**-VERSUS-**  
**L M M..... RESPONDENT**  
**JUDGMENT**

1. By the petition of divorce dated 15th September 2015, the petitioner prays that:

**(a) That the marriage between the Respondent and petitioner be dissolved and a Decree Nisi do issue**

**and the**

**(b) That the Decree Nisi be confirmed within 3 months or such shorter period as the court may deem fit and expedient.**

**(c) That the custody of the child of the marriage namely A S M M be granted to the petitioner**

**(d) That the respondent be compelled to maintain the minor while under the petitioner's custody.**

**(e) That the respondent do refund Kshs.200,000 which the purposes of building a house and purchasing a tank and that the money was meant to be refunded to the petitioner.**

**(f) That costs of the proceedings herein be borne by the respondent**

**(g) That such further and/or other orders be made as the court deem fit and expedient**

2. Briefly the petitioner states that she married to the respondent on the 22nd October 2010 under African Christian marriage at [Particulars withheld] Nyamira Catholic Church with the consent and knowledge of their respective parents after due dowry was paid.

The petitioner and respondent then settled in Kisii to where the respondent practiced as an advocate of the High Court of Kenya.

3. That their marriage was blessed with two issues thereof a baby **D** who passed on immediately after birth and **A M M**.

4. That however during the subsistence of this marriage, respondent treated the petitioner with utmost cruelty and contempt.

Particulars of cruelty were as set out here-below:

**(i) Night club routine by the respondent there days after celebration of the marriage, and never stopped.**

**(ii) Despising the petitioner**

**(iii) Failure to provide for the child's school fees and basic needs**

**(iv) Failure to create a conducive environment for the family**

**(v) Using abusive and derogatory against the petitioner,**

**(vi) Deny the petitioner conjugal rights.**

**(vii) Subjecting the petitioner to loneliness**

**(viii) Practicing massive unfaithfulness**

**(ix) Neglecting the petitioner with the child.**

**(x) Failure to communicate**

**(xi) Failure to heed calls to reconcile despite several efforts**

5. That consequently the marriage between the petitioner and the respondent has irretrievably broken down and various attempts to reconcile have bone no success.

6. Arising out the above cruelty, the petitioner moved out on 1<sup>st</sup> April 2015 from the matrimonial home to their parent's home at Nyamira.

7. That there are neither pending nor previous proceedings between the respondent and the petitioner in this court or any other court concerning the same subject matter.

8. That the petition has not connived and or condoned the act of cruelty.

9. The respondent, however, avers that the petitioner wholly contributed to the breakdown of the marriage and efforts to reconcile were fruitless.

The respondent alleges desertion by the petitioner. Moving out of the matrimonial house on the 1<sup>st</sup> of April 2015 was unilateral and the petitioner took and carried away all and everything in the house.

Prior to 1<sup>st</sup> April 2015, she severally the petitioner would frustrate the marriage by constant running away to her father's home.

10. The respondent lists several acts of cruelty by the petitioner:

- (a) Carrying on with her ex-boyfriends into the marriage
- (b) Constantly taunting the respondent how her ex- boyfriends made better husbands than the Respondent.
- (c) Spitting on the respondent and saying how useless in bed and (that) somebody could do it on the respondent's behalf
- (d) Found in compromising situation with somebody very close to her in Sameta lodge.
- (e) Contacting all female names saved on the respondent's cellphone including relatives and clients asking them how they are related to the respondent.
- (f) Hacking into the respondent's phone and diverting all incoming calls to her phone
- (g) Constantly coming late to the house drunk with several cans of alcohol.
- (h) Drinking with men of questionable character in town until late hours.
- (i) Chasing the respondent with a knife whenever confronted on moral issues.
- (j) Threatening to kill herself and the child while drunk
- (k) Forcing the respondent to give school fees of the child of the petitioner's relative without prior discussion.
- (l) Deviating from the Catholic faith and joining a cult.
- (m) Exercising cult prayers which she did while stark naked for the entire night lighting candles and cursing the respondent as a devil.
- (n) Calling the respondent a devil
- (o) Hardily spending a minute in the respondent's rural home
- (p) Failure to heed to the advice on issue of reconciliation
- (q) Being a pathological liar
- (r) Deserting matrimonial home to start life on her own

11. In the circumstances the parties here cannot stay together as husband and wife it will be **JUST** that the marriage be dissolved.

### **Analysis of evidence**

12 The court has carefully considered the petition as filed and the evidence adduced by both the petitioner and the respondent respectively. It is not in dispute that the petitioner and the respondent solemnized their marriage on 22nd October 2010 which means the petitioner and the respondent had been together for more than (3) years prior to the filing the petition. This court finds that the petition here is competent having been filed within the provisions of **section 6 of the matrimonial causes Act, Cap 152) Laws of Kenya.**

13. The grounds for dissolution of marriage are stipulate **under Section 8 (i) of the mentioned causes Act,** thus:

"A petition for divorce may be presented to the court either by the husband or the wife on the ground that the respondent:-

**(a) Has since the celebration of marriage committed,**

**or**

**(b) Has deserted the petitioner without cause for period of at least (3) years immediately preceding the presentation of the petition or**

**(c) Has since the celebration of marriage treated the petitioner with cruelty, or**

**(d) In curably of unsound mind and has been continuously under care and treatment for a period of at least five years immediately preceding the presentation of the petition and by the wife on the grounds that her husband has since the celebration of the marriage been guilty of rape, sodomy or bestiality.**

14. It has been said in testimony by the Respondent, that petitioner has deserted the responded since 1st April 2015.

15 I also find that cruelty has been proved within the parameters considered on 197-7 case N vs N [2008] 1 K/L/R (G & F) wherein Madam J (as she then was) held inter alia that:-

**"Whether cruelty as a matrimonial offence has been established is a question of fact and degrees which should be determined by taking into account the particular individual concerned and the particular circumstances of the case rather than by any objective standards".**

16 I am therefore, convinced that this marriage has broken down irretrievably even though the petition and respondent did not call any other witnesses. There have been efforts reconcile husband and wife to no avail, the petitioner has on several occasion ran away to her home and finally left on 1<sup>st</sup> April 2016 for good.

17. In the circumstances, I find that the marriage is dead and I see no reason why the court should not grant the orders sought as it is obvious to the court that the couple herein have lost all love for each other and the likelihood of re-union is remote.

18. According, I hereby pronounce a decree of divorce and order that the marriage solemnized on 22nd October 2010 at [Particulars withheld] Nyamira Catholic Church between **D N O** and **L M M** be and is hereby dissolved.

The Decree nisi shall issue forthwith and shall be made absolute after the expiry of 30 days from the date hereof.

Custody be granted to the petitioner in respect of **A S M M**, with reasonable access to the respondent.

The respondent shall give maintenance to the child while in custody of the petitioner and pay school fees until the child finishes schools or tertiary education.

The petitioner prayed for the refund of Kshs.200, 000. And the respondent prayed for the refund of the money previously loaned to the respondent.

The court orders the two be set-off.

The cost of this petition to be borne by the respondent.

It is so ordered.

Dated at Nyamira this 18<sup>th</sup> day of August 2016.

**C.B. NAGILLAH**

**JUDGE**

**In the presence of:-**

D N O the petitioner

L M M the respondent

Mercy -Court Clerk