



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT NANYUKI

DIVORCE . NO. 2 OF 2016

P S PETITIONER

VERSUS

J PRESPONDENT

JUDGMENT

1. **P S** has petitioned, under the Matrimonial causes act cap 152 (**now repealed**) seeking divorces on the ground that **J P** the respondent was cruel to her.
2. **P S** and **J P** were married on 3rd May, 1999 in Netherlands, under the Dutch Law. Before their marriage **P S** had a son, namely **S – V –L**, from another relationship. **S–V–L** was born on 18th January, 1992. After marriage **J P** Accepted **S – V- L** as a son of the marriage even though he did not formally adopt him.
3. **P S** and **J P** moved to Kenya in the year 2004 and on their arrival they settled in Nanyuki area. They obtained a loan from a friend which enabled them buy a piece of land in Nanyuki, [Particulars withheld], where they built their matrimonial home.
4. **P S** stated that their marriage from the year 2008 was what she termed as rocky. She attributed this state of their marriage to the cruelty of **J P** In evidence **P.S.** said that at first there was lack of communication between them. Thereafter she stated there were fights between them due to small differences. However, in the year 2009 **J P** beat her which led to her attending hospital for treatment. On being discharged from hospital she stayed at friends place. She however returned to their matrimonial home in an attempt to reconcile with **J P** in September, 2010 their marriage deteriorated and **P S** moved out of the matrimonial home. Within two months of her leaving that home **J K** informed **P S** that he had begun a new relationship with another lady. **P S** stated that it was then that she knew the marriage had broken down irretrievably.
5. **J K** did not defend the divorce cause and indeed when parties appeared before the deputy registrar of this court on 28th June, 2016 they sought directions for the divorce cause to proceed as undefended.
6. For all intents and purposes the divorce cause was undefended save that **J K** gave evidence at the hearing of the divorce cause. It is pertinent to note that **J K** on being cross examined by Learned Counsel **Mr. Ombachi**, for **P S**, **J K** stated that **P S** had attended hospital after she was beaten, which in the courts opinion confirmed the evidence of **P S** that she had attended hospital following **J K**'s physical attack of her.

ANALYSIS AND COURT'S DETERMINATION

7. P.S. has petition for divorce on the ground that J K was cruel to her. Section 8 (1)(c) of Cap 152 is the section that set out the ground of cruelty as one of the grounds that one can petition for divorcé. Under that it is provided that a party may petition for divorce on the ground that the respondent

“(1) (c) has since the celebration of the marriage treated the petitioner with cruelty;

8. P S narrated to the court how there were quarrels between her and J.K. it seems that those quarrels were bearable and it was not 2009 that P S left the matrimonial home after J K physically attacked. After that attack she needed medical attention. In this regard the decision of **R A F – V – S M [2014]eKLR** is pertinent where the Learned Judge Edward Muriithi replying on another decision stated. There are also circumstances as held Madan, J (as he then was in N V. N [2008] 1KLR [G& F] 16, where conduct between the parties may be perceived as so cruel that they cannot be expected to live up with. In Madan, J's formulation:

“if two spouses have reached the point of not being able to live together reasonably happily for caused some of which may appear trifling to an outsider but are of vital effect upon their lives and which are felt by them to be intolerable, or unreasonable to continue to bear then, they are entitled to be released from their matrimonial union, the guilty spouse bearing the consequences.”

Another case in point is **R A O v K O O [2014]eKLR** where the court stated:

“A M A vs G S B HCDC No. 134 of 2010, Kariuki J said:

*“It is said that for cruelty to constitute a ground for divorce in law, it must be grave and weighty and must cause injury to the petitioner's health or reasonable apprehension or such injury. Cruelty is willful and unjustifiable conduct of such a character as to cause danger to life, limb or health, bodily or mental or so as to give rise to a reasonable apprehension of such a danger (see **Russell v. Russell [1895] P. 315, 322. see also D.Tolstoy on The Law and Practice of Divorce, Sixth Edition.**”*

9. In the court's view the P S has proved on a balance of probability that the J K has treated her with cruelty by physically attacking her and even by telling her that he had started a new relationship. No sufficient evidence however was led on maintenance for example how much each party earns and how much maintenance is sought. No orders therefore shall be issued. Accordingly the marriage between P S and J P celebrated on 3rd may, 1999 in Netherlands is hereby dissolved. A decree nisi dissolving the marriage is hereby issued. That decree nisi shall be made absolute within 30 days from the date of this judgment. Each party shall bear their own costs.

Dated and Delivered at Nanyuki this 27th October, 2016

MARY KASANGO

JUDGE

Coram

Before Justice Mary Kasango

Court Assistant – Njue

Petitioner

Respondent

COURT

Judgment delivered in open court

MARY KASANGO

JUDGE