



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**MILIMANI LAW COURTS - FAMILY DIVISION**  
**DIVORCE CAUSE NO. 49 OF 2015**

**R M.....PETITIONER**

**F S.....RESPONDENT**

**JUDGMENT**

**PLEADINGS**

The Petitioner filed this Petition on 12<sup>th</sup> March 2015 seeking the dissolution of her marriage to the Respondent. The Petitioner and the Respondent were lawfully married under the **African Christian Marriage and Divorce Act, Chapter 51 of the Laws of Kenya (Repealed)**, at the AIC Kweluu Church Mwingi on the 20<sup>th</sup> August 2011 and were issued with a Certificate of Marriage.

The Petitioner and the Respondent lived together as man and wife in Ngara for less than one year but had no issue from the marriage. The Petitioner alleged that during the subsistence of the marriage the Respondent was very cruel and she listed the particulars of cruelty as;

- a) The Respondent never consummated the marriage.
- b) The Respondent used words that were demeaning to the Petitioner and that greatly caused her anguish and low self esteem.
- c) The Respondent never spent time with the Petitioner.
- d) The Respondent went away from the matrimonial home and married another woman with the help and blessing of his parents, with whom they now have two children.

The Petitioner left the matrimonial home after several attempts on her life by robbers and the constant demand for her to leave by the Respondent.

The Respondent has never come seeking the Petitioner or made attempts to reconcile and live together. Any attempt to reconcile the family through the parents and church leaders has been turned down by the Respondent. By reason of the aforesaid matters, the marriage solemnized between the Respondent and the petitioner has irretrievably broken down. The Petition is not presented or prosecuted in collusion with the Respondent. The Petitioner has not in any way been an accessory to, continued or condoned the acts of cruelty adultery or desertion. There are no previous proceedings relating to the marriage between the parties herein. The Petitioner seeks dissolution of the marriage and for the Respondent to pay for this cause.

The Respondent did not file any response to the Application. There is proof that the Respondent was personally served with the Petition as he entered appearance but failed to answer to the Petition. The Petition proceeded undefended.

## **HEARING**

The Petitioner was present in court for hearing on the 29<sup>th</sup> September, 2016. In her Oral evidence before this court the Petitioner stated that she and the Respondent lived in Ngara from the 20<sup>th</sup> August 2011 and on that night he said he had made a mistake marrying the Petitioner and he missed his former girlfriend. He left for the former girlfriend and the Petitioner stayed on for five months.

The Respondent threatened the Petitioner and accused her of having cursed him. The Respondent threatened the Petitioner that she should leave if she valued her life. Later when the Petitioner went to their matrimonial home she found men outside their house who threatened her. The Petitioner was scared and she left the home in May 2012 and moved to Kangemi. After two months he married the former girlfriend and has a child from that marriage.

## **DETERMINATION**

**Section 64** of the **Marriage Act 2014** provides:

*The parties to a marriage celebrated under Part III may seek the services of any reconciliation bodies established for that purpose that may exist in the public place of worship where the marriage was celebrated*

Additionally, **Section 65** states that:

*A party to a marriage celebrated under Part III may Petition the court for a decree for dissolution of the marriage on the grounds of-*

- a. One or more acts of adultery committed by the other party;*
- b. Cruelty, whether mental or physical inflicted by the other party on the Petitioner or on Children, if any, of the marriage;*
- c. Desertion by either party for at least three years immediately preceding the date of presentation of the petition;*
- d. Exceptional depravity by either party;*
- e. The irretrievable breakdown of the marriage.*

The Petitioner has raised three grounds for divorce, adultery, cruelty and exceptional depravity. In **ALEXANDER KAMWERU VS. ANNE WANJIRU KAMWERU (2000) eKLR** being an appeal from **HIGH COURT OF KENYA, DIVORCE CAUSE NO. 75 OF 1992**, the Court of Appeal gave guidelines on the applicable burden of proof as follows:

*“Applying the yardstick of the burden and standard of proof as set out above we would say that the feeling of some certainty by Court, that is being satisfied as to be sure; means being satisfied on preponderance of probability. Certainly cruelty or desertion may be proved by a preponderance of probability, that is to say that the Court ought to be satisfied as to feel sure that the cruelty or desertion, or even adultery (all being matrimonial offences) has been (as the case may be) established.”*

In the instant case adultery on the part of the Respondent has been proven by the Respondents marriage to another woman and the issues arising from that union. This affair is persuasive enough to enable the court

to come to the conclusion that the Respondent was adulterous during the subsistence of the marriage. The Respondent did not oppose the claims made by the Petitioner and as such the assertions remain un-rebutted.

The Petitioner testified and it is evident by the Respondents actions that the Respondent gave up on the marriage soon after they were married. The Petitioner alleged, and it has not been contested, that the Respondent threatened her and was verbally and emotionally cruel towards her. The Petitioner's call for reconciliation has not been headed to by the Respondent, who remains indifferent and uninvolved. In the current circumstances it would be in the best interest of both parties that the marriage is dissolved

### **DISPOSITION**

This court finds that the marriage between the Petitioner and the Respondent has irretrievably broken down on the grounds of cruelty, desertion and exceptional depravity.

Decree Nisi to issue within 30 days.

Decree absolute within 6 months.

Each party to bear its own costs.

**READ AND SIGNED IN OPEN COURT AT NAIROBI THIS 13<sup>th</sup> DAY OF OCTOBER 2016.**

**M. W. MUIGAI**

**JUDGE**

**In the presence of;**

**Ms. Muchiri in person**