



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**DIVORCE CAUSE NO. 45 OF 2012**

**J K M.....PETITIONER**

**VERSUS**

**J K M.....RESPONDENT**

**JUDGMENT**

1. On 27<sup>th</sup> Day of June 1991 the Petitioner got married to the Respondent, at the Attorney General's Chambers, Sheria House in accordance with the Marriage Act (CAP 150) Laws of Kenya. After the said marriage, the Petitioner and the Respondent cohabitated as husband and wife at Kileleshwa Nairobi (in a house provided for by the petitioner's father), South C Nairobi and later on at Buru Buru Nairobi. The petitioner and the respondent have been blessed with two issues out of the said marriage namely H M K born on 23/9/1991 and J B K born on the 25/6/93.
2. The petitioner alleges that since the celebration of the said marriage and in the cause of time, the said marriage became marred by situations and events that rendered its existence highly improbable, which differences have since become irreconcilable and this has led the respondent to desert the matrimonial home. The petitioner asserts that the respondent has been cruel to him; that the respondent has abandoned and/or abdicated her matrimonial responsibilities to the petitioner as a result of which the petitioner has been subjected to much mental and psychological torture and distress; that the petitioner asserts that the marriage between the petitioner and the respondent has otherwise irretrievably broken down by reason of the respondent's attitude and/or behavior afore-stated and the petitioner's efforts to revive it have not yielded any fruits; that the respondent is callous, uncaring, disrespectful, cruel and sadistic; that it is well over 5 years now and the respondent has not kept contact and/or interacted with the petitioner as a spouse; that the respondent has since communicated to the petitioner to the effect that any reconciliation attempts and/or efforts further initiated by the petitioner will only make her hate the petitioner more and/or have the effect of drawing her further and further away from the petitioner; that the respondent has even gone as far as communicating to the petitioner that she has since moved on with her life and that the petitioner should equally move on with his; That the petitioner has not condoned, connived with or in any way been accessory to the afore-stated matters; that the petitioner has not in any way colluded with the respondent or any other person in the institution of this petition; that the petitioner prays that the marriage between the petitioner and respondent be dissolved, pending the termination of the marriage, there be an order for judicial separation and costs of this petition.
3. The respondent completely deserted the Matrimonial Home in January 2007 with absolutely no intentions of ever going back and the petitioner asserts that they have never lived together since then.

The Respondent filed an amended answer to petition and cross petition on the 16/8/13.

4. The respondent denies the allegation raised by the petitioner in his petition adding that the petitioner had promised the respondent's parents that he would educate her through college since he had already impregnated her. She depones that she and the petitioner had lived together as husband and wife for a period of 17 years. She alleges that the petitioner has treated her and their children with cruelty and deserted them from their matrimonial home causing them to live by themselves at his own father's compound at Kileleshwa without his support and/or maintenance; She denied abdicating her spousal and parental responsibilities to the petitioner and the children of the marriage as alleged nor deserted the matrimonial home and avers that she had continued without default to pay all the house bills and maintain the children by paying all school fees for the children of the marriage without the petitioner's assistance; She avers that if the marriage has irretrievably broken down then it is due to the petitioner's acts of desertion and cruelty toward the respondent she added that efforts to get in touch with the petitioner ever since they separated have been futile and he has even rejected all the attempts to reconcile the marriage and deliberately refusing to involve his father in talks claiming his father is his greatest enemy; that the petitioner has completely neglected his parental responsibility towards his children and since they separated he took the children to her claiming that he was unable to take care of them and she has single handedly brought up the children on her own without his assistance and urges the court to dismiss the petition with costs.
5. The petitioner in his testimony reiterated the grounds the averments of his petition. He testified that on 27<sup>th</sup> June 2006 he came in the evening to find that the respondent had left with all her belongings he tried calling her but she was not picking his calls and it was then that he went looking for her at her father's home but did not find her. That he they were engaged in a process with the aim to reconcile and to get her back it is then that her cruelty emerged and despite his efforts she refused to go back to him claiming that she had moved on. He stated that he had a good relationship before then and they were happy. He testified that he fended for the family until they left. He added that he has not had access to the children since they separated as they are not allowed to visit him. He sought access to the children. On cross examination he denied knowing where the respondent was living and was surprised that she was his father's compound. He stated he has supported his son in various ways. He admitted that his father pays rent for the respondent.
6. The respondent on her part testified that she is currently a business woman and resides in Ongata Rongai. She testified that when the petitioner lost his job she continued supporting the family. She testified that in 2006 the petitioner become cruel and accused her of being a prostitute and went to her boss's office to have her sacked. That at one time he put salt on her clothes and she deserted him because of his cruelty. That she tried to get in touch with him to take care of the children but he refused and she has educated them from 2006 to 2012. The respondent admitted to abandoning the matrimonial home in 2006.
7. The petitioner narrated incidents of cruelty and desertion by the respondent. The respondent on her part though she admits that she deserted the matrimonial home claims she did so because of the cruelty meted out on her by the petitioner. In her cross petition the respondent alleges cruelty, desertion is one of the grounds provided for under the Matrimonial Causes Act Cap 152 (now repealed) and also the Marriage Act 2014. In the case of **DM –vs- TM (2008) 1KLR 5, Chesoni, J** as he then was said,

**“ To establish cruelty the complaint must show to the satisfaction of the court :-**

- i. misconduct of a grave and weighty nature,**
- ii. real injury to the complainant's health and reasonable apprehension of such injury**
- iii. that the injury was caused by misconduct on the part of the Respondent**
- iv. that on the whole the evidence of the conduct amounted to cruelty in the ordinary sense of the word”**

8. The petitioner and the respondent have each given a detailed account of the cruelty meted on them by each other. The respondent admitted deserting her home due to the petitioner's cruelty. She has proved her ground of cruelty and the petitioner the ground of desertion. The parties admitted that efforts to reconcile them has been unfruitful they have stayed apart since their separation. The marriage between the parties has irretrievably broken down on the grounds of cruelty and desertion.
  
9. I therefore dissolve the marriage between the petitioner and the respondent that was celebrated at Nairobi Office on the 17th June 1991 .The parties have a parental responsibility agreement dated the 16<sup>th</sup> of April 2013. The petitioner shall have reasonable access to the children as agreed by the parties. A *Decree Nisi* to issue forthwith and to be made absolute within 30 days. Each party to bear its own costs. It is so ordered.

**Signed, dated and delivered this 30<sup>th</sup> Day of April 2015.**

**R. E. OUGO**

**JUDGE**

In the presence of:

.....**Petitioner**

.....**Respondent**

.....**Court Clerk**