



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**DIVORCE CAUSE NO. 225 OF 2013**

**R A..... PETITIONER**

**VERSUS**

**E N K.....RESPONDENT**

**JUDGMENT**

1. The petitioner filed a petition dated the 16<sup>th</sup> October 2013 seeking to have the marriage between himself and the respondent to be dissolved. On the 5<sup>th</sup> day of December 2006 the petitioner then a spinster was lawfully married to the Respondent then a bachelor at the Registrar's office, Nairobi. The petitioner and the respondent before and after the said marriage cohabited in Jamhuri II Estate in Nairobi from the date of marriage until 6<sup>th</sup> November 2010. There are two issues of the said marriage. The petitioner is an auditor and a resident in Nairobi Kenya while the Respondent is a businessman in Nairobi. That the respondent has on several occasion obtained money from the petitioner under the guise of investment only to channel the money to other avenues which he refused to disclose to the petitioner. That the respondent has shown both by deed and conduct that he has neither love nor affection for the petitioner; That in the subsistence of the marriage the respondent has continually displayed cruelty to the petitioner;

**Particulars of Neglect**

- i. The respondent has, during the subsistence of the marriage, failed to take care of the family and refused to perform the normal duties of a husband.
- ii. The respondent has failed to take care of the health of the petitioner and has totally ignored her emotional wellbeing and conjugal needs.
- iii. The respondent, between December 2008 and September 2009 when the petitioner was expectant of the second issue of the marriage, displayed no concern whatsoever with regard to the petitioner's health and pregnant status.
- iv. The respondent has since the subsistence of the marriage failed to act his part of catering for the financial needs of the family.
- v. In fact, it is the petitioner who has always been catering for the family needs.

**Particulars of Cruelty**

- i. Throughout the period when the petitioner was expectant of their second child, the respondent never bothered to know about the petitioner's health.
- ii. Since July 2009 the Respondent has continually refused to conjugal with the petitioner thereby occasioning the petitioner unnecessary emotional stress and psychological torture.
- iii. The respondent has made the petitioner contribute colossal amounts of money to him under the disguise of investment yet the respondent has failed to account for the money.

- iv. The respondent has on several occasions insulted the petitioner and belittled her in the presence of relatives, friends and neighbors.
- v. The respondent even extended his disregard for the petitioner to her friends and at one time assaulted the petitioner and her friends.
- vi. The petitioner had to undergo counseling for a period of six weeks arising from the respondent's ill treatment.
- vii. The respondent has always triggered fights between them, which fights the petitioner has had to avoid by keeping quiet.
- viii. The petitioner at times had to lock herself up in the bedroom to prevent the respondent from assaulting her.
- ix. The respondent has totally abdicated his responsibility as a husband and has instead demonstrated his total rejection and hostility towards the petitioner by his insults, threats, violence and lack of confidentiality in marriage.
- x. The petitioner had to move out of the matrimonial home due to the unbearably hostile and humiliating environment created by the respondent.
- xi. That during the subsistence of the marriage, the respondent was adulterous with women known and unknown to the petitioner.
- xii. That the respondent confessed before the petitioner's relatives of engaging in an extra marital affairs with another woman.
- xiii. That the respondent admitted to the petitioner of having an affair with a woman known to the petitioner a Ms. G A A.
- xiv. That the petitioner has not in any way been accessory to or connived at or condoned the respondent's desertion and/or willful neglect.

The petitioner prays that; the marriage herein be dissolved and that consequently the parties herein be divorced; that such just order as to the custody and maintenance of the children of the marriage.

2. Despite the respondent being served with the petition he did not enter appearance or file a response. The petitioner sought the same to be allowed to proceed as an undefended petition and the same was allowed by the Deputy Registrar on 9<sup>th</sup> October 2014.

3. The petitioner testified that she and the respondent have 2 children E K born 2007 and A K O N born 2009. She testified as follows; that the respondent was cruel to her, he neglected her and the children, he lived a flasy life and she was left to pay for water, electricity, rent and fees. That whenever he contributed money he would create a fight about it. That at one time he had slapped her in front of the children. That in 2008 she gave the respondent money for his business only for him to buy a flashy car while she was in need of furthering her education and he gave a lot of money to his mother and relatives. That he was also having an affair with a lady between 2008 to 2012, he confessed the relationship to her guardian as a result her health deteriorated and she had to receive counseling at Aga Khan Hospital. That in October 2010 he deserted and moved in with one G. That the respondent was emotionally and physically abusive to her as he used to punch her and push her down the stairs. That she and the respondent had not had sex since 2009 as he slept on the sofa in the living room and used to turn her away. That in December 2008 and November 2010 the respondent went away for 2 weeks. That she has met G at his business premises and she confirmed it. That after the desertion in 2010 they tried to work it out but the respondent stated that he wasn't interested. She stated that she needed to move on with her life. That though the respondent had money he did not take parental responsibility of the kids in 2007 and 2008 yet he had money to go for trips in Mombasa and Naivasha. She testified that they lived in pain and in constant assault.

4. The petitioner's allegations were not challenged.

5. The petitioner has alleged cruelty against the respondent and has narrated various incidences to support the same. In the case of **DM -VS- TM (2008) 1 KLR, 5**, Chesoni, J. as he then was, said:-

*“To establish cruelty the complainant 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, and*
- iv. *That on the whole the evidence of the conduct amounted to cruelty in the ordinary sense of that word."*

The petitioner in her testimony has narrated incidences that in my view touch on physical and emotional cruelty. In this regard I find that the petitioner has proved her ground on cruelty. It was also her evidence that the respondent deserted them in the year 2010.

6. Cruelty and desertion are some of the grounds divorce provided for under the Matrimonial Causes Act Cap 152 (now repealed) and also the Marriage Act 2014. It is obvious that the marriage between the petitioner and the respondent has broken down irretrievably. Accordingly I dissolve the marriage between the petitioner and the respondent solemnized on 5th day of December 2006 at the Registrar of Marriages under the Marriage Act Chapter 150 of the Laws of Kenya. A decree nisi to issue and to be made absolute within 30 days. No orders as to costs. It is so ordered.

Dated, signed and delivered this **30<sup>th</sup>** day of **April**, 2015.

**R. E. OUGO**

**JUDGE**

In the presence of:-

.....**For the Petitioner**

.....**Court Clerk**