



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**DIVORCE CAUSE NO. 239 OF 2013**

**K W M.....PETITIONER**

**VERSUS**

**P M G.....RESPONDENT**

**JUDGMENT**

1. The petitioner alleges that she started cohabiting with the respondent in 1999 in the respondent's house in Waithaka. The petitioner and respondent sired one child M G on 21/4/2002. Later on 15/3/2006 the parties formalized their wedding at the Registrar's office and were issued with a marriage certificate. The petitioner claims that the respondent has been violent and cruel to her on several occasions and that he was a habitual drunkard who has committed adultery with several women unknown to her subjecting her to mental and emotional stress.

2. She particularized the particulars of cruelty, adultery and drunkenness. Stating that the respondent had on one occasion slapped her and when the petitioner left for the U.K. to work as a nurse the respondent hardly stayed at home and could stay away for days. In 2009 he falsely accused the petitioner of having an affair with a family friend creating acrimony between the two families. In 2010 in Sheffield England the respondent threatened to kill the petitioner which forced her to call the police on him. In 2010 the respondent grabbed her by the neck scratching her and inflict on her permanent marks adding that the respondent has not contributed to the financial welfare of the child despite being ordered to do so by a UK child agency on which he only complied twice by giving the respondent 165 pounds. On adultery she stated that she was informed by her sister that the respondent had sired a child with another woman before they had their and that he had in instances of his drunkenness lost their child's passport and visa when he was attacked by thugs at 4 a.m. while going home drunk as a result of the cruelty the petition has suffered emotionally and psychologically and their relationship has deteriorated so much that they no longer enjoy conjugal rights since 2010. She prays for the dissolution of the marriage and that she be granted actual and legal custody of the child of the marriage.

3. The respondent despite being served did not defend the petition and the Deputy registrar issued a certificate that the same proceed as an undefended petition.

4. The matter came up for hearing on 19/3/2015. She reiterated the averments as raised in her petition and her evidence was not controverted.

5. The respondent alleges cruelty and adultery by the respondent as grounds for divorce. Cruelty and adultery are some of the grounds for divorce provided for under the Matrimonial Causes Act Cap 152 (now repealed) and also the Marriage Act 2014. The petitioner has given a detailed account of the cruelty meted on her by the respondent. 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.”*

6. The petitioner has narrated incidences of abuse and threats and at times the petitioner had to involve the police this in my view amounts to cruelty. However though the petitioner has proved the ground of cruelty I find that she has not adduced evidence to support her allegations on adultery as the evidence she relies on is hearsay. I find that the marriage between the parties has irretrievably broken down on the grounds of cruelty and there is no possibility of reconciliation. This court therefore dissolves the marriage between the Petitioner and the Respondent celebrated on 15/3/2006. 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.

Dated, signed and delivered this **28<sup>th</sup>** day of **May** 2015.

**R. E. OUGO**

**JUDGE**

In the presence of:

.....**Petitioner**

.....**Respondent**

.....**Court Clerk**