



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**DIVORCE CAUSE NO. 196 OF 2014**

**N.H.A .....PETITIONER**

**VERSUS**

**R.T.....RESPONDENT**

**JUDGMENT**

Before this court is a petition with a verifying affidavit filed by the Petitioner N.H.A on 3<sup>rd</sup> of October 2014 seeking to have the marriage between her and the Respondent R.T dissolved on ground of cruelty.

The Petitioner and the Respondent were lawfully married on 18<sup>th</sup> July 2008 and their marriage was solemnized in the AG's chambers.

The Petitioner attached a certified true copy of the marriage certificate. After the celebration of marriage, the Petitioner and the Respondent travelled to Tanzania where the Respondent resides. The petitioner travelled back to Kenya the same weekend.

The Petitioner is a Hotelier while the Respondent is a Head of Training and Logistics with *[particulars withheld]* based in Arusha.

The Petitioner is a Kenyan citizen and domiciled in Kenya while the Respondent is Liberian and domiciled in Tanzania.

The Petitioner and the Respondent were not blessed with children in their marriage. However the Petitioner informed the Court that the Respondent had three children with three other women.

The Petitioner deponed that the Respondent treated her with cruelty during the subsistence of the marriage. The particulars of cruelty as illustrated in the Petitioner's petition are as follows;

- a. The Respondent refused to convert to Islam from Christianity and this has resulted in stress to the Petitioner.
- b. The Respondent spends less time with the Petitioner since both are married in secrecy.
- c. The Respondent deprived the Petitioner conjugal rights and this has caused the Petitioner mental anguish
- d. The Respondent and the Petitioner barely communicate to each other and a few times they met, there was no sexual intimacy.

The Petitioner avers that the marriage between her and the Respondent irretrievably broke down. She has not condoned the cruel behavior of the Respondent.

The Petitioner prayed for orders that;

- a. The marriage between her and the Respondent be dissolved,
- b. The Respondent pays the costs of the suit,
- c. Any other relief court deems.

The Petitioner served the Respondent with the petition with the notice to appear on the 7<sup>th</sup> of November 2014. The Respondent acknowledged receipt of the documents according to the affidavit of service filed on 23<sup>rd</sup> of February 2015 by a Process Server, Alex M. Kimeu. However, the Respondent neither entered appearance nor did he file an answer to the petition and cross-petition within the specified time.

The Petitioner moved court by way of Chamber Summons filed under **Order 29(1) of the Matrimonial Causes Rules** on the 23<sup>rd</sup> February 2015 seeking issuance of a certificate for the matter to proceed for hearing as an undefended cause. The Registrar's certificate was issued and the matter was scheduled for hearing on 14<sup>th</sup> May 2015.

During the hearing, the Petitioner gave sworn evidence and stated that she and the Respondent lawfully married on the 18<sup>th</sup> July 2008. After celebrating the marriage, the Petitioner and the Respondent went to Arusha where the Respondent resides. They had a sleepover and the Petitioner returned to Kenya the next day. The Respondent had agreed to convert to Islam and pay dowry to the Petitioner's parents. However, the Respondent did not fulfill that promise. The Petitioner lived a secret life and never told her parents she was married to a Christian man. In a month, the Respondent and the Petitioner met for just hours. The Petitioner and the Respondent did not consummate the marriage. The Petitioner came to learn that the Respondent had three children with three other women. The Petitioner and the Respondent were not blessed with children in their marriage. She prayed to court to grant her divorce.

The court has evaluated the evidence adduced by the Petitioner and submissions. The Petitioner based her application on cruelty of the Respondent. According to **Section 66(1) of the Marriage Act**, a party to a civil marriage may not petition the court for separation of the parties or for the dissolution of the marriage unless three years have lapsed since the celebration of marriage. The Petitioner and the Respondent celebrated their marriage in 2008. The petition was thereby accepted by court as the three years had lapsed.

**Section 66(2) of the Marriage Act** stipulates for the grounds of divorce to include; adultery, cruelty, exceptional depravity by the other spouse, desertion for at least three years, and irretrievable breakdown of marriage

The petition before court was brought on grounds of cruelty. The Petitioner deponed that the Respondent refused to convert to Islam from Christianity and this caused her mental anguish. The Petitioner lived in a life of secrecy because she could not reveal to her family that she was married to a Christian. The Respondent and the Petitioner barely communicated to each other. They always met a few times and it could only be for hours. The Respondent spent less time with the Petitioner since both were married in secrecy. The Respondent came to Kenya a few times and the Petitioner went to Arusha a few times. The Respondent deprived the Petitioner conjugal rights and this has caused the Petitioner mental anguish. In **DM v TM (2008) 1 KLR 5**, where Hon. Justice Chesoni (as then was) stated that;

***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.***

Cruelty entails physical and mental cruelty according to **the Black's Law Dictionary**. The dictionary

further defines mental cruelty to mean one spouse's course of conduct (not involving actual violence) creates such anguish that endangers the life, physical or mental health of the other spouse. Looking at the evidence, the Petitioner suffered mental anguish living a life of secrecy with the Respondent. Hence amounting into mental cruelty. The Respondent did not controvert this evidence. The Respondent did not file pleadings or testify in Court. Therefore the court finds the evidence plausible that the Petitioner has proved on a balance of probabilities her case.

**Section 66(6) of the Marriage Act**, marriage is said to have irretrievably broken down if one or more of these conditions exist. The conditions include;

- a. *A spouse commits adultery;*
- b. *A spouse is cruel to the other spouse or to any child of the marriage;*
- c. *A spouse willfully neglects the other spouse for at least two years immediately preceding the date of presentation of the petition;*
- d. *The spouses have been separated for at least two years whether voluntary or by decree of the court where it has;*
- e. *A spouse has deserted the other spouse or at least three years immediately preceding the date of presentation of the petition;*

The Respondent was cruel towards the Petitioner by denying her conjugal rights. The Petitioner lived in secrecy with the Respondent thus causing her mental cruelty. Both the Petitioner and the Respondent reside in different countries. In this case, there is no doubt that the marriage between the Petitioner and the Respondent had irretrievably broken down with no possibility of salvaging the marriage and no likelihood of reconciliation.

On the basis of the foregoing, the court hereby orders as follows;

- a. The petition is upheld.
- b. The marriage between the Petitioner and the Respondent that was solemnized on the 18<sup>th</sup> July 2008 is dissolved.
- c. Decree nisi to issue forthwith.
- d. Decree absolute to issue in six (6) months.
- e. The Respondent shall bear the costs.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 26<sup>TH</sup> DAY OF JUNE 2015.**

**M. MUIGAI**

**JUDGE**

**In the presence of Mrs. Mueni for the Petitioner**