



**REPUBLIC OF KENYA**

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

**DIVORCE CAUSE NO. 222 OF 2014**

**H G K .....PETITIONER**

**VERSUS**

**E M N .....RESPONDENT**

**JUDGEMENT**

1. By a petition dated 12<sup>th</sup> November 2014 and filed in court on 18<sup>th</sup> November 2014, the petitioner prays for the dissolution of the marriage between the him and E M N, who is named as the respondent herein and that the custody and maintenance of the child of the marriage be left to him.

2. The ground upon which the application is premised is cruelty. The particulars are that the respondent on several occasions would leave the matrimonial home without informing the petitioner and return late or not come back at all thereby causing stress and strain in the marriage and causing the petitioner emotional pain and anguish. It is alleged that on many occasions the respondent would return home in the small hours of the morning totally drunk to the extent that she could not be able to carry out her duties as a wife. She is accused of denying the petitioner conjugal rights thus causing the petitioner mental anguish and emotional stress. It is averred that on 1<sup>st</sup> July 2007 she spent the entire night out and when she came in the morning she was totally drunk and there was a condom in her bag but she denied having any knowledge about the condom. When their child was two years, he had got her a job at *[particulars withheld]* Exhibition and every evening he would pick her with his car and she would refuse to go home with him only to come home at midnight totally drunk complaining that there was a traffic jam, this cause distress to the petitioner because the child was an infant who needed to be breastfeed. The respondent's phone was always full of love messages from different men with whom she was having affairs with. On 19th May, 2008, she packed all her belongings and left the matrimonial home to her boyfriend's house. Efforts to reconcile the marriage are said to have been futile.

3. The record shows that the Respondent was served with a copy of the petition and notice to appear. Antony Mwangi Ngotho's affidavit of service, sworn on 18<sup>th</sup> November 2014, states that the respondent was served on even date at 3: 45pm, however, she did not enter appearance and upon her failure to do so, the court proceeded to hear the petition in spite of her absence.

4. The petitioner gave sworn testimony and told the court that he married the respondent in 2006, and they were blessed with one child. He told the court that he was seeking divorce because the respondent left him with a child of two years and was not at all concerned about the child. He stated that the respondent left him for another man at Rongai on two occasions. Attempts were made to resolve the problems in the marriage to no avail. It was his testimony that he found condoms in the respondent's

purse, and that the respondent told him that she would leave him to get married to someone else.

5. I am of the view that as the respondent did not bother to enter an appearance nor defend herself, she has no interest whatsoever in the matter and is uninterested in the marriage. I find her conduct as detailed by the petitioner quite distressing, and conclude that she has treated the petitioner with cruelty which has brought the marriage to its tether's end. Given that the petitioner's evidence was uncontroverted, I hold that the petitioner has proved the matrimonial offence of cruelty and that he is entitled to the order he seeks for the dissolution of the marriage.

6. On the issue of custody and maintenance of the child of the marriage, the petitioner shall pursue the same at the Children's Court for that is the court with jurisdiction to deal with issues regarding child custody and maintenance.

7. Accordingly, the court makes the following orders:-

**(a) That the marriage solemnized on 15<sup>th</sup> March 2006 at Nairobi District between H G K and E M N be and is hereby dissolved:**

**(b) That decree *nisi* shall issue forthwith, the same to be made absolute after expiry of a period of 30 (thirty) days from the date hereof; and**

**(c) That there shall be no order as to costs.**

**DATED, SIGNED and DELIVERED at NAIROBI this 31<sup>ST</sup> DAY OF JULY, 2015.**

**W. MUSYOKA**

**JUDGE**

Petitioner present in person.