



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERICHO

DIVORCE CAUSE NO. 17 OF 2013

J C M PETITIONER

VERSUS

C K LRESPONDENT

J U D G M E N T

1. **J.C.M** the Petitioner and **C.K.L** the Respondent herein were married under the **Marriage Act** on **28th September, 2007** at the District Commissioner's office Kericho. Their Marriage Certificate was produced as **PEXBI**.
2. After the celebration of the marriage they cohabited at [particulars withheld withheld] **village** within **Kericho District**. The marriage was blessed with one issue namely **B.C**.
3. Both the Petitioner and Respondent are teachers by profession. On **28th November, 2013** the Petitioner filed a Petition seeking the dissolution of their marriage and custody of the only issue of the said marriage.
4. She cited **cruelty** and **adultery** as the main grounds of divorce. She gave particulars of the same in paragraphs 7 and 8 of the Petition.
5. In his answer to the Petition the Respondent denied all the allegations of adultery and cruelty. He in fact states that its the Petitioner who is guilty of adultery and cruelty. He gave particulars of the same in paragraph 5 of his response.
6. He finally Cross-Petitioned for divorce, on the same grounds.
7. In her *viva voce* evidence the Petitioner explained her pleadings. She gave a detailed account of what she has gone through with the Respondent since she got married. Her evidence was an expansion of the pleadings. She stated that she left her matrimonial home in **April 2008** and has never gone back. She accuses the Respondent of adultery and cruelty for the six (6) months they stayed together as husband and wife.
8. In his evidence the Respondent accuses the Petitioner of adultery. He states that the Petitioner left his home for further studies and she never returned. She also committed acts of adultery.
9. He however admitted to not supporting his wife in her pursuit for further education. He gave the reason that the wife did not want his support and she had not informed him of the arrangements of going back to school.

10. Without getting into the details of the evidence that was adduced in this matter, I would term the evidence as that of accusations and counter accusations. None of the parties called a witness to corroborate their evidence, but their evidence is very clear on what they want.
11. I have noted from the marriage certificate (**PEXBI**) that when the parties got married the Petitioner was aged 22 years while the Respondent was 30 years. The Petitioner was quite young and needed a lot of counseling and guidance to cope, with the tough experiences she was going through. It appears she got none. Staying together for only six(6) months and then separation is quite telling.
12. I heard both parties well and saw them testify. Their body language told it all. They have clearly made up their minds about the dissolution of the marriage. They have lived separate lives since **April 2008** a period of over six(6) years now. I find this marriage to have irretrievably broken down, and should be dissolved.
13. There is one issue of the marriage who has all along been under the care of the Petitioner. From the way the Respondent answered questions on this subject of the child it is clear he has not been supportive to the said child. There is no evidence that he has been denied access to the child. It is not enough just to be a father. A father should take up parental responsibilities to his child or children without being coerced.
14. A party is bound by his/her pleadings. The court will not grant prayers that have not been asked for. The Respondent has nowhere in his pleadings sought for access to their issue of marriage. This clearly confirms that no one has denied him access, and this court will not issue orders in imaginary things.
15. It is therefore obvious that he has no objection to the prayer that the Petitioner be given custody of the issue of their marriage.
16. The result is that the Petition and Cross-Petition are allowed. The marriage solemnized between the Petitioner and Respondent is hereby dissolved as prayed.
 - a. *A decree nisi to be issued and the same to be made absolute after six(6) months.*
 - b. *The Petitioner to have custody of the child of the marriage.*
 - c. *Each party to bear his/her own costs.*

Dated, signed and delivered this 28th day of November, 2014

H.I. ONG'UDI

JUDGE

In the presence of:

Korir – Court Assistant

No appearance for the parties and counsels