



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NYERI**  
**DIVORCE CAUSE NO.1'A' OF 2007**

**DWN.....PETITIONER**

**VERSUS**

**VMW.....RESPONDENT**

**JUDGMENT**

The Petitioner herein Mr. DWM on 3rd April 2007 filed a petition for divorce against the Respondent herein in which he stated that on 3rd February 2001 they got married at EKN and that out of the said union they were blessed with two issues namely:-

- a) *N.N. - then aged 5 years*
- b) *V.M. - then aged 2 years*

2. It was stated that since August 2006 the Respondent had treated the Petitioner with a lot of cruelty and committed acts of desertion particulars whereof were stated as:-

**PARTICULARS OF DESERTION**

- a) *Chasing the petitioner away from the matrimonial home;*
- b) *Failing/declining to cohabit with the petitioner;*
- c) *Denying the petitioner access to the issues of marriage;*
- d) *Refusing to stay in the petitioner's family premises.*

**PARTICULARS OF CRUELTY**

- a) *Treating the petitioner with contempt;*
- b) *Holding out the petitioner as an unwholesome spouse;*
- c) *Denying the petitioner conjugal rights;*
- d) *Creating and promoting disrespect of the petitioner by the issues of the union;*
- e) *Denying the petitioner an opportunity to provide for the issues of the union.*

3. The petitioner therefore contended that the union between him and the respondent had irretrievably broken down without any chances of reconciliation.

4. In response to the said petition the respondent filed a replying affidavit on 12th April 2007 in which she deponed that it is the petitioner who deserted the matrimonial home at [Particulars Withheld] College for his rural home at [Particulars Withheld] but instead went elsewhere to cohabit with another woman known to him and that the petitioner had always been treating the respondent with cruelty and desertion despite the fact that the respondent had corroborated greatly through development loan from her Co-operative Society by putting up a house and installing water at the petitioner's father's land at [Particulars Withheld].

5. The petition was fixed for hearing on 6th May 2014 but on 28th April 2014 the parties herein allegedly filed a consent order dissolving their marriage with each party bearing his/her own cost.

6. When the petition came up for hearing before me, the parties were advised that as the law stands they cannot dissolve their marriage by consent and therefore the alleged consent was withdrawn and the matter proceeded for hearing as a defended petition.

#### PETITIONER'S CASE

7. The petitioner testified on oath and stated that they were married on 3rd February 2001 and established a matrimonial home at [Particulars Withheld] in 2004. They went to [Particulars Withheld] where they started having problem as they could not agree on anything leading to her telling him to pack his things and leave. He stated that he left for his father's home. It was his evidence that the problem started since it was the respondent who was working while the petitioner was engaged in small farming and some business having dropped out of school at form two. He therefore testified that the marriage had broken down and each needed to move on.

8. Under cross examination by the respondent, he denied having left the house on 9th August 2006 at 3.00 a.m and that it is the respondent who told him to leave the house.

#### RESPONDENT'S CASE

9. The respondent testified on oath and stated that she had not denied the petitioner his conjugal rights and that it is the petitioner who left her at her place of work. She further stated that they had tried reconciliation but the petitioner is not willing and that when he filed for divorce she felt that they could not live together and therefore would like to carry on with her life together with her children.

10. Under cross examination by the petitioner she stated that she took loan and gave to the petitioner a sum of Kshs.120,000/= for the purpose of building a house and that the petitioner was at the time living with another woman.

11. The court on its own motion ordered the respondent to produce documents in support of the allegation that she had taken a Co-operative Loan for purpose of constructing a house which she did and in response thereto the petitioner stated that they build the house in 2004 while the loan was taken after they had completed building the house.

12. From the evidence tendered by the petitioner, it is clear that the same has not been able to prove any of the grounds of divorce pleaded apart from the fact that since he was not working while the respondent was working the same felt that he was not receiving the respect he deserved as the man of the house. He alleges that the respondent had asked him to leave the matrimonial house which in this case is the house issued to her by virtue of her employment.

13. Whereas the petitioner was unable to prove any of the grounds of divorce as pleaded, from the general conduct of the parties it is clear to me that the marriage between the parties have irretrievably broken down and the parties have since moved on since the year 2006 and what therefore remains in this

marriage is the marriage certificate. The petitioner feels inadequate before the respondent who at the time of filing of divorce was the sole bread winner having taken the role of the man by constructing a house in his father's home for the family.

14. Whereas the respondent has not asked for divorce or division of the said house, I take this view that having contributed to the construction of the same and in view of my finding that the marriage has broken down, I find that she is entitled to a share thereof.

15. This court has said before that it is high time our marriage laws allow for Divorce by consent as the parties had attempted to do and would therefore make the following orders:-

*a) The marriage celebrated between the petitioner and the respondent on 3rd February 2001 is hereby dissolved.*

*b) The Decree Nisi to be issued forthwith.*

*c) The petitioner to make appropriate arrangement to refund to the respondent the full cost of their rural house.*

*d) Each party to pay their own cost.*

**Dated and Signed this.....day of.....December 2014**

**J. WAKIAGA**

**JUDGE.**

Delivered by Justice J. Ngaah on behalf of Justice Wakiaga this **18th** day of **December** 2014

**J. NGAAH**

**JUDGE.**

In the presence of:

----- for Petitioner

----- for Respondent