



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

**DIVORCE CAUSE NO. 31 OF 2010**

**BETWEEN**

**N K C.....PETITIONER**

**AND**

**P A M.....RESPONDENT**

**JUDGEMENT**

The petitioner in this matter married the respondent on 25<sup>th</sup> March 2000. This was at a Christian ceremony conducted at the Sts Anargyroi Orthodox Church, Nairobi. A certificate of marriage serial number [*particulars withheld*] was issued. The couple cohabited in Nairobi, New Zealand and Nairobi again. They have been blessed with one issue, L P M (minor).

The petition in this matter was filed on 31<sup>st</sup> March 2010. In it the petitioner alleges that the respondent has treated her with cruelty. She has particularised the allegations in the petition - ranging from withholding of conjugal rights, rejecting the petitioner both physically and emotionally, attempting to commit suicide after argument with the petitioner, physical abuse, among others.

The respondent was served and entered appearance and filed an answer and cross-petition. He denies the allegations in the petition and explains some of the matters set out in the petition. In his cross-petition, the respondent seeks divorce on the grounds adultery and cruelty. His case is that since July 2008 he has had an extra-marital affair with a S C, who he names in the cross-petitioner as a co-respondent. The said co-respondent is alleged to be living in the matrimonial home with the petitioner. He alleges cruelty founded on a number of grounds – drunkenness, aggressive behaviour, reckless and dangerous conduct, misuse of resources, denying the respondent access to the child of the marriage, disclosure of family secrets, adultery, among others. He would like the marriage dissolved and joint custody of the child of the marriage, and costs of the suit.

The co-respondent was served with the answer and cross-petition. He entered appearance but did not file an answer to the cross-petition.

The matter was granted the registrar's certificate on 7<sup>th</sup> April 2011 to proceed for hearing as a defended cause.

The cause proceeded for hearing on 14<sup>th</sup> June 2012 before Mugo J after on false start. At the hearing of the petition, the petitioner told the court:

- a. That the correspondent moved into the couple's matrimonial home in July 2008;

- b. That the petitioner dropped the respondent's name from her name in August 2008 and adopted the surname Critics, and informed their son that they were getting divorced;
- c. That the allegations made in the petition were all lies.

I note from the record that the respondent was very emotional as he testified about the cruelty that he suffered in the hands of the petitioner and when he testified about the troubles that her son was going through. The record shows that he wept several times. I also note that the court was concerned about the welfare of the child and ordered that he be produced for an interview by the court. The child was produced on 19<sup>th</sup> July 2012 and was interviewed by the trial judge for one hour and fourteen minutes. The record is unfortunately silent on what transpired between the child and the trial judge. The interview was in the presence of Ms Kalsi for the respondent. The respondent's advocates say that the child wished to stay with the respondent as opposed to the mother.

The petitioner did not testify at the hearing. The correspondent did not also did not attend court. In the absence of an appearance by the petitioner, the respondent's allegations are uncontroverted. The particulars of adultery and cruelty set out in the petition remain unchallenged. Even the evidence presented orally in court is also uncontroverted. There is overwhelming evidence that the marriage between the parties has irretrievably broken down.

It would appear to me that there has been no collusion between the petitioner and the respondent to bring these proceedings. There is also no evidence that the petitioner has condoned the cruelty meted on him.

I am convinced that this is a proper case for grant of the orders sought in the cross-petition dated 20<sup>th</sup> June 2010. I will therefore make the following orders:

1. That the marriage celebrated between the petitioner and respondent on 25<sup>th</sup> March 2000 is hereby dissolved.
2. That the petition dated 22<sup>nd</sup> March 2010 is hereby dismissed
3. That the decree *nisi* shall issue forthwith and may be made absolute after thirty (30) days.
4. That custody of the child of the marriage is granted to the respondent, but the petitioner shall access the child over on alternate weekends and school holidays with prior arrangements with the respondent. The respondent shall drop the child at the residence of the petitioner at 9.00 am on the appointed days, and the petitioner shall thereafter drop the child at the residence of the respondent at 5.00 pm.
5. That costs are awarded to the respondent.

**DATED, SIGNED and DELIVERED at NAIROBI this 21st DAY OF June, 2013.**

**W. MUSYOKA**

**JUDGE**