



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

**DIVORCE CAUSE NO. 2 OF 2013**

P C .....PETITIONER

VERSUS

J K K ..... RESPONDENT

**JUDGMENT**

**P C K**, the Petitioner herein, filed the Petition dated 11th January, 2013, in which she sought for the following orders:

- a. **The marriage so solemnized between the Petitioner and the Respondent and which is still subsisting be dissolved and custody of the only issue of the union be granted to be Petitioner.**
- b. **That the costs of the Petition be borne by the Respondent.**
- c. **Any other relief this Honourable Court may deem fit and just to grant.**

The Petition was served upon **J K K**, the Respondent herein. Despite having been served with the Petition, the Respondent did not deem it fit to file a reply to the Petition hence the same proceeded for hearing as an undefended cause.

When the cause came up for hearing, the Petitioner testified without summoning independent witnesses. It is the Petitioner's evidence that she got married to the Respondent on 19th July, 1996. Their marriage was solemnized at the Registrar of marriages office, Weltham Forest District, London in the United Kingdom. She produced the certificate of marriage issued to them as an exhibit in evidence. The Petitioner further told this court that after the celebration of their marriage they established their matrimonial homes at [particulars withheld], Kericho County and at [particulars withheld] It is her evidence that their marriage was with a daughter namely **V C K**, now aged 13 years. She produced her daughter's birth certificate as an exhibit in evidence.

The Petitioner stated that their marriage has irretrievably broken down in that the Respondent has been cruel to her thus making her suffer mental anguish and torture. She claimed that the cruelty complained of is so serious that it poses real injury to her health and that the Respondent is to about to change despite her Protestation. She alleged that the Respondent withdrew from her the matrimonial companionship, left the United Kingdom for Kenya and has never returned for the last 1½ years. The Petitioner further accused the Respondent for lacking in financial Probity. She claimed the Respondent sold matrimonial property and thereafter misappropriated the proceeds. She also alleged that the Respondent bought a lorry which he registered in the name of a company and yet they had agreed that he registers the same in her name and that the Respondent becomes hostile to her when she queries his conduct. The Petitioner was categorical when cores-examined by Mr. Kirui, learned advocate for the

Respondent that the Respondent has in many occasion been sorry for mistreating her but despite promising to amend his ways, he has never changed for the better. She claimed that they have had irreconcilable differences that it is no longer tenable for the marriage to continue subsisting. She said there were previous attempts to have them settle the differences but all were in vain. For the above reasons she urged this court to grant her judgment as prayed in the Petition.

There is no doubt that the Petitioner has simply relied on the ground of cruelty to have their marriage with the Respondent dissolved. The ingredients which must be present in order to prove cruelty were restated by this court in **Meme =vs= Meme [1975] K.L.R 13** in which it held *inter alia*

***“(1)That the question whether cruelty had been established was a matter of degree and fact to be decided on all the circumstances of the particular case; 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 or 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 of the evidence the conduct amounted to cruelty in the ordinary sense of that word”***

In this cause, the Respondent did not file any response to dispute the allegations of cruelty. He did not even contest by way of cross-examination the allegations of cruelty when told to this court when the Petitioner orally testified. I have no reason not to believe the Petitioner that she was hurt by the Respondent's lack of financial Probity. I have no reason also to doubt the Partitioner's averment that the Respondent is not about to change his ways despite promising to do so. The Respondent has not controverted the allegation that he failed to register a lorry in the name of the Petitioner as agreed but instead registered the same in the name of a certain company. It is also not denied by the Respondent he sold matrimonial property but he failed to account for proceeds to the Petitioner. In my estimation, I am convinced the Respondent's uncontroverted conduct caused the Petitioner mental anguish. That is injurious to the Petitioner's health. There is reasonable apprehension of such injury being visited on the Petitioner. I am satisfied that the ground of cruelty was proved to the required standard in matrimonial causes. In the end the Petition dated 11th January, 2013 is allowed in terms of prayers (a) and (b). For the avoidance of doubt:

- 1. It is ordered that the marriage solemnized between the Petitioner and the Respondent be dissolved.**
- 2. The custody of the child is given to the Petitioner.**
- 3. The Respondent to pay costs of the Petition.**
- 4. A decree nisi to issue and to be made absolute within three (3) months from the date hereof.**

**Dated, signed and delivered this 29th day of November, 2013**

**J.K. SERGON**

**JUDGE**

**In open court in the presence of**

Mr. Mutai holding brief for Mr. Orina for the Petitioner

In the absence of Mr. Kirui for Petitioner

Mr. Korir- court clerk