



E.A alias A.A.....PETITIONER

-VERSUS-

P.K.N.....RESPONDENT

JUDGMENT

The petitioner, who was then a bachelor, married the respondent in a ceremony conducted by the Registrar of Marriages, in **November, 2007** in Mombasa; and thereafter the parties cohabited in Kwale. Between the respondent and the petitioner, an Italian who first visited Kenya as a tourist, as from **2004** but has since **2007** been a permanent resident, there was no issue of the said marriage.

The petitioner pleads that since the celebration of the marriage, the respondent has treated him with cruelty, and caused him mental anguish and suffering. He sets down the particulars of cruelty as follows:

- (i) the respondent has on several occasions assaulted him, occasioning his hospitalization;*
- (ii) the respondent has been a habitual drunkard and, while drunk, has done acts occasioning him embarrassment;*
- (iii) the respondent has treated him with hostility, harassment and intimidation;*
- (iv) the respondent has neglected her household duties even when the petitioner has been ill and bedridden;*
- (v) the respondent has come in and out of the matrimonial home on whim, often absenting herself for long, unexplained periods of time;*
- (vi) the respondent has physically and mentally tortured the petitioner;*
- (vii) the respondent has introduced into the home, for the purpose of continual stay, a man said to be her brother, but who later turned out to be a male partner;*
- (viii) the respondent has been deceitful to the petitioner and has since the solemnization of the marriage, had a pregnancy with a different man, a pregnancy resulting in a unilateral abortion contrary to the petitioner's expressed will;*
- (ix) the respondent has been in the habit of demanding "colossal amounts of money from the petitioner", which she has misused, while leaving the petitioner penniless and without nourishment;*
- (x) the respondent has recklessly driven cars bought by the petitioner, crashed the same, and made demands for replacement;*

(xi) *the respondent has been nagging, and has denied the petitioner conjugal rights.*

The petitioner pleads that as a consequence of the respondent's cruelty, the marriage has irretrievably broken down. He states that he has not been an accessory to, nor connived at, nor condoned the respondent's cruelty and desertion; and pleads that his petition is not lodged in collusion with the respondent. On **27th September, 2010** the petitioner had been granted leave to lodge this petition before the expiry of a period of three years since the celebration of the marriage.

The petitioner prays that the marriage be dissolved, and that the respondent be condemned in costs.

Although a Notice to Appear, dated **4th October, 2010** was served upon the respondent on **18th October, 2010** she filed no papers and has not participated in the proceedings under the cause herein.

Learned counsel, **Ms. Osino** who represented the petitioner, submitted before the Court, on **2nd June, 2011** that this is an undefended cause even though it had been properly served.

Introducing the case, **Ms. Osino** asked the Court to grant the Orders sought, on grounds of cruelty by the respondent. She submitted that the marriage had irretrievably broken down, and it was in the circumstances, fair and just to grant a decree of divorce.

The petitioner, **E.A alias A.A** gave his testimony in Italian, as PW1, being interpreted by **Thomas Musinga Madeda** who had been duly sworn.

PW1 testified under oath that he is aged 81 years, is a retired mason, and lives in Kilifi. He had married the respondent, **P.K.N**, in a civil ceremony at the Attorney-General's Office in Mombasa, the Marriage Certificate being No.[...]; and thereafter the two cohabited in Kwale. The parties married each other in **November, 2007**, and separated in **2010**.

The petitioner testified that the respondent had exhibited cruelty towards him: she repeatedly assaulted him, especially after partaking of alcohol; she would leave the matrimonial home, and stay in unknown places for as long as two months at a time. On one occasion the respondent had assaulted the petitioner and injured him, but then prevented him from finding his way to hospital for treatment; he had to seek the assistance of a Good Samaritan, to get to hospital, where he remained admitted for 10 days. This incident, which the petitioner proved with exhibits in the form of medical documents, was subsequently reported to the Police.

The petitioner testified that he had found after he married the respondent, that she was already pregnant; and she then obtained the sum of Kshs.40,000/= as well as a car from the petitioner, before going away only to return later after securing an abortion. The respondent, on another occasion, brought a man into the house, representing this man to be her brother and, on that basis, he remained in the house for one year, but the man turned out to have been the respondent's boyfriend; this man was accorded the privilege of staying with the parties as he had also played the role of bestman when the parties solemnized their marriage in **November, 2007**.

It was the petitioner's evidence that he had purchased a car for the respondent; but from that moment, she was absent from home most of the time; she would just depart from the matrimonial home, leaving the petitioner alone, and he had to take all his meals in neighbouring hotels. The petitioner testified: *"From the moment I bought [her] the motor vehicle, love disappeared; thereafter we never slept together."* The petitioner pleaded: *"It has been disgusting conduct; I want to end the marriage. I want to start a new life; she can keep all the things I bought for her."*

By choice, the respondent did not contest this cause, and did not seek to come and give any testimony contrary to that of the petitioner. The petitioner's testimony stands unchallenged, quite apart from the fact that nothing in his demeanour, in the witness box, raised anxiety as to his truthfulness; his account is realistic and, so far as the Court is able to perceive, candid. Such evidence establishes and fortifies the petitioner's case, and the Court will certainly grant his prayers.

Being of relatively advanced age, and still being enterprising enough to adopt a new home-country, with differing communities, as his domicile of choice, it is only natural that the petitioner would yearn for a kind and harmonious domestic setting; but by his evidence, he only came face to face with violent and explosive reality at the intimate, domestic level, and found himself in a life of stress and regrets. He pleads and demonstrates by evidence numbers of instances of cruelty which he suffered at the hands of his wife, and he rightly senses that his marriage to the respondent has irretrievably broken down. The respondent avers that he has not condoned the several matrimonial offences committed against him, and he did not connive at them. And he avers that he has not colluded with the respondent so as to have his prayers granted. There is no reason to disbelieve him.

I hereby make a *decree nisi*, granting the petitioner's prayer for divorce. The decree may be made absolute on a suitable application according to law.

I make no Order as to costs.

Decree accordingly.

SIGNED at NAIROBI

**J.B. OJWANG
JUDGE**

DATED and DELIVERED at MOMBASA this 13th day of February, 2012.

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**M.A. ODERO
JUDGE**