



B.B.N.....PETITIONER/APPLICANT

VERSUS

L.J.M..... RESPONDENT

JUDGMENT

The Petitioner in this matter seeks an order for dissolution of the marriage celebrated between her and the Respondent. Her grounds are that the Respondent has since the celebration of their marriage treated her with cruelty, committed adultery and subsequently abandoned the Petitioner thereby causing her exceptional hardship and mental anguish. Although the Respondent was duly served, he neither entered appearance nor did he file any answer to the petition, or a cross-petition of his own. Consequently, the matter proceeded undefended.

The particulars of cruelty relied upon are set out in paragraph 8 of the petition. These are that –

- (a) The Respondent is a person of violent disposition and throughout his stay with the Petitioner, he consistently harassed, quarreled and mentally abused the Petitioner.***
- (b) The Respondent is (sic) persistently picked verbal fights with the Petitioner and/or engaged the Petitioner in arguments for no apparent reason and would yell, call the Petitioner abusive names, insult and write abusive text messages on his phone to the Petitioner without any justifiable cause.***
- (c) The Respondent has never introduced the Petitioner to his family, relatives and friends notwithstanding the Petitioner's requests that he does so.***
- (d) The Respondent's behaviour towards the Petitioner is not that of a spouse, as the Respondent does not support the Petitioner, whether financially and/or emotionally and does not even inquire about her welfare and whereabouts.***
- (e) The Respondent is a very unreasonable, untrustworthy and dishonest man for during the period he cohabited with the Petitioner he was always in trouble with the law for not paying his debts and taxes and more often his creditors would cause the Petitioner great embarrassment as a result of the Respondent's failure to honour his responsibilities.***
- (f) The Petitioner is a liar and a drunkard who cannot be entrusted with the Petitioner's life.***
- (g) The Respondent's cruel, unreasonable, drunken behaviour and irresponsible conduct is a bad influence to the Petitioner's children who are minors.***
- (h) The Respondent treats the Petitioner as a total stranger.***

In her oral evidence in Court, the Petitioner stated that not only did the

Respondent treat her with a lot of mental cruelty during the marriage, but that sometimes he also turned physical. Taken individually, none of these grounds can really constitute cruelty in the sense in which that word is used as a ground for divorce. However, the cumulative effect of these grounds could easily give

rise to mental cruelty. For instance, failure to introduce a spouse to one's family cannot strictly amount to cruelty. Equally, failure to support a spouse whether financially or emotionally and failure to enquire about her welfare or whereabouts is not necessarily cruel. However, like many other grounds of the alleged cruelty, these modes of behaviour could translate to a clear manifestation that the marriage has irretrievably broken down. At its worst, it could also give rise to mental cruelty.

Similarly, the plea of the alleged adultery falls below the required standard of proof. The Petitioner states explicitly that she got wind of the adultery liaisons through sexually explicit electronic mail, giving rise to a presumption of adultery. The standard of proof of adultery is very high. It borders on proof of almost beyond reasonable doubt. A mere presumption will not do. I therefore find that the alleged adultery has not been proved to the required standard. The third ground on which the Petitioner relies is desertion. In her oral evidence in Court, she testified that the couple used to reside in her house in U[...], Nairobi. However, the Respondent left the Petitioner in 2007. Consequently, she doesn't love him anymore and she would not like to live with him ever again. It is her testimony that she did not in any way contribute to the Respondent's misconduct.

From this evidence, it is certain that by the time of the filing of this petition on 9th June, 2010, the Respondent had been away from the matrimonial home from 1st June, 2007 which was a period of slightly over 3 years. **Section 8 (1) (b) of the Matrimonial Causes Act (Cap. 152, Laws of Kenya)** states as follows –

“8. (1) A petition for divorce may be presented to the court either by the husband or the wife on the ground that the respondent –

(a)

(b) has deserted the petitioner without cause for a period of at least three years immediately preceding the presentation of the petition; or...”

In the context of this petition, which is undefended, I find that the Respondent has deserted the Petitioner without any reasonable cause and that the Petitioner is entitled to divorce on that ground. In any event, the marriage has irretrievably broken down and the Petitioner is very clear that she cannot live with the Respondent anymore. It doesn't pay to retain a shell of a marriage, and for these reasons I find that the Petitioner is entitled to the orders sought. I accordingly order that –

1. The marriage solemnized between the Petitioner and the Respondent at the Registrar's office in Nairobi in January, 2007 be and is hereby dissolved.

2. Decree nisi to issue.

3. Decree nisi to be made absolute upon application by either of the parties.

4. Each party will bear its own costs of this petition.

DATED and DELIVERED at NAIROBI this 28th day of March, 2012.

**L. NJAGI
JUDGE**