



**J.M.N.....PETITIONER**

**M.G.A..... RESPONDENT**

### **JUDGEMENT**

**The Petitioner, J.M.N**, seeks dissolution of his marriage to **the Respondent, M.G.A**. The parties got married in 2005 in the office of the Registrar of Marriage, in Nairobi. The Petitioner, then a (particulars withheld), was a bachelor aged 33 years and the Respondent, (particulars withheld), was a spinster aged 29 years. After the marriage the parties cohabited in Nairobi, where they had their matrimonial home. They got two children, **J.M** aged 11 years and **J.A** aged 5 years. They separated in June 2006 when they were unable to live together any longer.

In his Petition for divorce, and in his evidence in court, the Petitioner averred that the Respondent became cruel to him after the solemnization of the marriage in 2005. The parties had lived together prior to the marriage in a come-we-stay sort of relationship. The acts of violence after the marriage ranged from physical violence to embarrassing acts in public. It was the Petitioner's evidence that the Respondent, due to her suspicions, became rabid in searching for evidence of infidelity particularly messages in his cell phone. She also interrogated the Petitioner's staff and friends as well as the Petitioner's business associates, and clients about the Petitioner's private life and thus succeed in destroying his reputation and image as well as his self esteem. It was the Petitioner's evidence that he suffered severe stress, embarrassment and mental anguish. He told the court in evidence that the Respondent's behavior made it impossible for the marriage to succeed. The Petitioner told the court that he has not forgiven or condoned the Respondent's cruelty nor has he connived or colluded with the Respondent to seek dissolution of the marriage.

The Petitioner is a Kenyan by birth as is also the Respondent and both are domiciled in Kenya. The marriage between the parties was under the Marriage Act, Cap 150 and it is governed by the provisions of the Matrimonial Causes Act, Cap 152. If proved, cruelty is one of the grounds on which the marriage can be dissolved.

The grounds for dissolution of the marriage are stipulated in Section 8(1) of the Matrimonial Causes Act thus:-

*S.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) has since the celebration of the marriage committed adultery; or*

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

(c) has since the celebration of the marriage treated the petitioner with cruelty; or

(d) is incurably of unsound mind and has been continuously under care and treatment for a period of at least five years immediately preceding the presentation of the petition, and by the wife on the ground that her husband has, since the celebration of the marriage, been guilty of rape, sodomy or bestiality.

The Petitioner alleged cruelty on the part of the Respondent and gave evidence to support it. It is said that for cruelty to constitute a ground for divorce in law, it must be grave and weighty and must cause injury to the Petitioner's health or reasonable apprehension of such injury. *Cruelty is willful and unjustifiable conduct of such a character as to cause danger to life, limb, or health, bodily or mental or so as to give rise to a reasonable apprehension of such a danger* (see **Russell v. Russell [1895] P. 315, 322. See also D. Tolstoy on The Law and Practice of Divorce, Sixth Edn.** It is important to point out that it is settled law that intention is not a necessary ingredient of cruelty and neither a malevolent intention, nor a desire to injure, nor knowledge that the act done is wrong and hurtful, need be present for conduct to amount to cruelty (see **Gollins v Gollins [1964] AC 644; Williams v Williams [1964] AC 698, 760. Tolstoy, 6thEdn states** that the question in all cases is whether the Respondent's conduct was cruel, rather than whether the Respondent was himself or herself a cruel person (see **Gollins v. Gollins (supra)** at page 670 and **Williams v Williams (supra)** at pg 721. It is however worth noting that intention is not totally irrelevant because conduct which is intended to hurt strikes with a sharper edge than conduct which is the consequence of mere obtuseness or indifference (see **Jamieson v Jamieson [1952] A.C. 525, 535.** Moreover, a deliberate intention to hurt may turn into "cruelty conduct" which, without such intention, would not constitute cruelty.

In this case the Respondent's acts in humiliating the Petitioner in public, her suspicions and over-bearing conduct and depravity had the underlying malice and were clearly intended to hurt. The Respondent clearly had no interest in the welfare or happiness of the Petitioner. She seemed intent on making sure that the Petitioner suffered and became miserable. The Petitioner put up with these acts of cruelty for some time in an attempt to see whether he could save the marriage but to no avail. He did not however condone the cruelty.

The Petitioner's conduct was unjustified. It caused reasonable apprehension and adversely affected the Petitioner's health. There is no evidence that the Respondent was mentally ill or had other disability and one can only conclude that she intended the natural and probable consequences of her actions, namely to hurt the Petitioner. It is my finding that the acts of cruelty were grave and weighty and affected the health and happiness of the Petitioner who suffered stress and anguish due to Respondent's demeaning and embarrassing acts. It is my finding that the acts complained of amounted to cruelty in law which I find proved.

The marriage between the parties is dead. It exists only in name. Accordingly, **I pronounce a decree of divorce and hereby dissolve the marriage between Petitioner and the Respondent on the ground of cruelty on the part of the Respondent.**

In the first instance, a **decree nisi** shall issue forthwith and subject to the provisions of section 15 of the Matrimonial Causes Act, Cap 152, **the decree nisi shall be made absolute after the expiry of three months** after this pronouncement. It is so ordered. There shall be no order as to costs.

**Dated at Milimani Law Courts, Nairobi, this 22<sup>nd</sup> day of March 2012.**

**G.B.M. KARIUKI, SC**  
**JUDGE**

**COUNSEL APPEARING**

***Mr. C. M. Kabugu of Macharia Gakaria & Co. Advocates for the Petitioner***

*Mr. Kugwa, Court Clerk*