



**E.W.N..... PETITIONER**

**VERSUS**

**A.T.M..... RESPONDENT**

**JUDGMENT**

The petition before the Court is dated 29<sup>th</sup> September, 2009 and filed in Court on 30<sup>th</sup> September, 2009. The Petitioner prays for orders that the marriage between her and the Respondent be dissolved and/or annulled; that the Respondent be ordered to pay such monthly sum as this Court may consider reasonable for the upkeep of the Petitioner; that the Respondent be condemned to pay the costs of this petition; and any other relief that this Court may deem fit to grant.

The Petitioner's case against the Respondent is that he has been guilty of cruelty, adultery and that he has caused their marriage to irretrievably break down. To these allegations, the Respondent filed an answer to the petition as well as a cross-petition. In the cross-petition he accused the Petitioner in turn of having treated him with cruelty and engaging in adulterous liaisons with numerous men. He therefore prays that the Petitioner's petition be dismissed with costs; that the marriage herein be dissolved on the strength of his cross-petition; that costs of the cross-petition be awarded to him; and any other relief that the Court may deem fit to grant.

After considering the pleadings, the evidence adduced by the parties, and submissions, I note that in her pleadings, the Petitioner's only grounds for seeking a divorce were that the Respondent was guilty of cruelty and adultery. The only instance of cruelty alluded to was that the Respondent mistreated her by leaving her without food on several occasions. In her oral testimony, she alleged that the Respondent used to go away and leave her without food or money. Attempts to reconcile went begging. She testified that on one occasion, he brought another woman to their house and they all slept on the same bed, with the Respondent sleeping between the two women and telling the Petitioner that he had no use for her.

On the other hand, the Respondent's case was that it was the Petitioner who used to leave home and go to whole night prayers (kesha) for days on end leaving him without food and in the process denying him his conjugal rights.

On facts of this case it is not easy to tell which of the spouses is more truthful than the other. They were both cagey and evasive. However, the incident involving Susan raises some interesting questions. In paragraph 7 of her petition, the Petitioner accused the Respondent of being adulterous during the subsistence of their marriage. In particular, she says "the Respondent had illicit affairs with other women unknown to the Petitioner." If the women were unknown to her, then from where did she get the person of S? Either she knew about S and failed to disclose it in her petition, or the story of S was made up after the petition had been filed. Either way, the conduct of the Petitioner with regard to S depicts her in very bad light. Although she produced a photograph of a lady apparently walking innocently with a child, such a

picture does not add any value to her case since in the petition she said expressly that she did not know of the Respondent's alleged paramours. If that were true, from where did Susan surface? The degree of the Petitioner's honesty is highly questionable and leaves a lot to desired. The Respondent himself is not much better. If he can sleep between his wife and another woman in the same bed at the same time, I wonder how much else he can't do.

It is clear to me that this marriage has irretrievably broken down and each party has stated as much. It cannot be salvaged. The parties are simply incompatible and they cannot live together. It is therefore in the best interests of the parties that they should set each other free so that each of them can start afresh instead of compelling them to stick together. For these reasons, I make the following orders

**1. That the marriage solemnized in July, 2003 between the Petitioner and the Respondent herein at the Registrar's office, Nairobi, be and is**

***hereby dissolved in terms of the Respondent's cross-petition.***

**2. Decree nisi to issue.**

**3. Decree nisi to become absolute after 90 days upon application by any of the parties.**

In the circumstances of this matter, I don't find it prudent to make an award as to costs or any other order.

Orders accordingly.

**DATED and DELIVERED at NAIROBI this 15<sup>th</sup> day of March, 2012.**

**L. NJAGI  
JUDGE**