



**K.M.P..... PETITIONER**

**VERSUS**

**M.J.P..... RESPONDENT**

**JUDGMENT**

The petition before the Court is dated 3<sup>rd</sup> May, 2011 and was filed in Court on 30<sup>th</sup> May, 2011. The Petitioner thereby prays for judgment against the Respondent for the following orders –

- (i) *That the Petitioner be granted divorce.***
- (ii) *The Respondent be granted permanent legal custody, actual care and control of the one child of the marriage, A.P, or in the alternative the Petitioner be granted permanent legal custody, actual care and control of the one child of marriage A.P.***
- (iii) *The Petitioner to meet maintenance costs for the minor herein, A.P, if the Respondent is given custody of the minor herein.***
- (iv) *Each party do bear its own costs of this Petition.***
- (v) *Any other relief that this Court may deem fit and just to grant.***

In spite of having been served with a notice to answer to the petition, the Respondent did not do so. This led to the Deputy Registrar certifying that the matter be heard as undefended. At the hearing thereof, the Petitioner told the Court that the couple got married on 13<sup>th</sup> July, 2004 and that they had been married for about 7 years. He produced a copy of their Certificate of Marriage to substantiate that fact.

The Petitioner also testified that at the beginning, the Respondent was “like an angel” and that “she was No.1”. However, she subsequently took to drinking very heavily and when she drinks, she becomes a different person altogether. At one time, she stabbed the Petitioner with a knife on account of that drunkenness, and the Petitioner has reported different complaints to the police about 16 times. The couple has one child aged about 4 years and five months.

At the beginning the Respondent used to drink Guinness. However, these days she drinks Kenya Cane, and whenever she drinks, she goes wild and beats even the child. The Petitioner has taken her for rehabilitation twice, but when she comes out, she lapses into her drunken habits. If she reforms, the Petitioner would not mind to continue living with her, but if she stabs him and he dies, the child would be the one to suffer most. At the moment, the Petitioner is not ready to live with her any longer. He is apprehensive that she will kill him one of these days. He therefore prays for a divorce.

The Petitioner's evidence was supported by his witness, Police Constable Richard M. Mbaria who works at Athi River Police Station. He told the Court that the Petitioner had reported several incidents at the Police Station. On 1<sup>st</sup> July, 2011 the Petitioner went to report that he had been assaulted by his wife. This was duly recorded in the occurrence book and the Petitioner was given a P.3 form. The Police doctor examined him and confirmed that the Petitioner had been injured and the Respondent was taken to Court in Machakos. The couple also went to the Police Station around the 6<sup>th</sup> June, 2011 where they wrote an agreement under which the Respondent undertook never to drink again. She swore that she will never do so again. However, on 1<sup>st</sup> July, 2011, she got drunk and assaulted the Petitioner again.

It is obvious from this evidence that the Respondent has a drinking problem which is wreaking havoc not only to her as a person, but also to her family. It seems that she ceases to be her usual self after taking some drink. It is this drink which has caused her to stab her husband and threaten him even in the presence of their child. Visits to the rehabilitation centre have not assisted much for she lapses back to drink soon after coming back home. She has obviously caused the Petitioner a lot of mental torture, anguish and embarrassment. In the process, she has denied the Petitioner his conjugal rights and finally deserted him. At the time of the hearing of the petition, she was not living with him. On these facts I am satisfied that the Petitioner has proved both physical and mental cruelty on which he is entitled to an order for divorce.

The second marital offence which the Respondent is accused of is adultery. It was his evidence that the Respondent had committed adultery in the course of her marriage to the Petitioner. On or about 7<sup>th</sup> May, 2011 at around 11.30 p.m., he caught her in bed with one B.M.M who is the couple's house boy. It is embarrassing enough for a man to as much as suspect that his wife is having an affair. It is even worse for him to find her in a compromising situation with any other man. But to catch her in *pari delicto* is the worst that a wife can do to her husband. Such an encounter is bound to make any husband furious and probably jealous and many a man would not stand it. Some men would be provoked to kill for it.

On account of the foregoing, I find that the Petitioner has proved the two matrimonial offences of cruelty and adultery and that he is entitled to the divorce he has sought. On the other hand, the Respondent has demonstrated a total lack of commitment to their marriage. I accordingly make the following orders –

1. ***That the marriage solemnized between the Petitioner and the Respondent in July, 2004 in the Registrar's office, Nairobi, be and is hereby dissolved***
2. ***Decree nisi to issue.***
3. ***Decree nisi to become absolute after 90 days upon application by either of the parties.***
4. ***The Petitioner be and is hereby granted legal custody, actual care and control of the one child of the marriage.***
5. ***Each party to bear its own costs of this petition.***

Orders accordingly.

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

**L. NJAGI**

**JUDGE**

