



**V.B.S.....PETITIONER**

**VERSUS**

**B.J.S.....RESPONDENT**

**JUDGEMENT**

The petitioner herein **V.B.S.**, a Kenyan citizen, married the respondent **B.J.S.**, an Indian National 2<sup>nd</sup> July 2009 at {*particulars withheld*}, India under the Maharashtra Regulation of Marriages Act 1998, of India. The couple did not set up a matrimonial home but cohabited with the friends of the respondents for the first three months of the marriage and later with his parents at {*particulars withheld*}, India.

The petitioner filed this petition, praying that her marriage to the respondent be dissolved, notwithstanding that three years have not passed, for reasons that the same has irrevocably broken down for reasons of persistent and severe cruelty from the respondent and his family in India, as stated in her affidavit in support of the petition.

The respondent was served with the petition at his residence in India on 12<sup>th</sup> August 2011, but did not enter appearance or file any papers in response thereto. The petition therefore, proceeded undefended, wherein the petitioner testified orally and produced a copy of the marriage certificate issued by the Registrar of Marriages, on 9<sup>th</sup> July 2009.

The particulars of the respondent's cruelty towards the petitioner, as stated in paragraph 6 of her supporting affidavit are that:-

- (a) The respondent failed to establish a matrimonial home for the petitioner.***
- (b) The respondent caused the petitioner to live with his friends who later refused to accommodate her, forcing her to live on pavements, since his parents were out willing to accept her as their daughter in law.***
- (c) Forcing the petitioner to sell all her expensive gifts to meet the day to day expenses and upkeep of his parents when they eventually took her in to live with them.***
- (d) Failing to secure employment to support the petitioner, drinking heavily and picking up quarrels with the petitioner and often beating her.***
- (e) Refusing to let the petitioner engage in gainful employment to support herself, the respondent and his family.***
- (f) Detaining and holding the petitioner captive in the matrimonial home (the Respondent's parents home) where she was not allowed to step out at all.***
- (g) Forcefully taking away her Kenyan passport and retaining it to prevent the petitioner from leaving India.***

According to the petitioner, it took her family, with the help of the Indian police and friends to secure her release from the respondent and his parents and to bring her back to Kenya.

In view of the above cruelty metted out on the petitioner which she says she never condoned, the petitioner prays that the court finds that the marriage has irretrievably broken down and to decree that it be dissolved. She testified on oath that she has never filed any other proceedings in relation to the said marriage and has not colluded with the respondent in filing the present petition. She has waived her claim for maintenance and costs of the petition, praying only that the marriage be dissolved and if the court is so inclined, to reduce the period between the decree nisi and decree absolute to 15 days.

I have considered the petition and the evidence adduced in support thereof. I have also considered the provisions of the **Hindu Marriage and Divorce Act, (Chapter 157 of the Laws of Kenya)** which governs the subject marriage, having been celebrated under the Arya Samaj religion one of the religions recognized under **Section 2 of the Act** as conferring upon a believer the status of a Hindu. **Section 10 (c)** of the said Act provides cruelty as one of the grounds upon which a Hindu marriage can be dissolved, and provides under **Section 9** that the **Matrimonial Causes Act (Chapter 152 of the Laws of Kenya)** shall apply to matrimonial causes relating to Hindu marriages.

The respondent, having been served with the petition and neglecting to file a reply thereto is deemed to have conceded the grounds advanced herein. After due consideration of the facts as stated by the petitioner both in her sworn evidence and her supporting affidavit, I am satisfied that she has proved her case on the ground of cruelty under **Section 10 (c)** of the **Hindu Marriage and Divorce Act**, as read together with **Section 8 (c)** of the **Matrimonial Causes Act**. I therefore allow the petition and decree that the petitioner's marriage to the respondent be and is hereby dissolved. Accordingly a decree nisi shall issue forthwith.

On the application by counsel for the petitioner, made orally in court, and being satisfied that special circumstances have been shown to warrant a shortening of period with which a decree absolute shall issue, I hereby dispense with the 6 months statutory period and order that the decree nisi hereby issued shall become absolute after the expiration of 90 days unless otherwise ordered.

Orders accordingly.

**DATED, SIGNED and DELIVERED at NAIROBI this 8<sup>TH</sup> DAY OF March 2012.**

**M.G. MUGO**

**JUDGE**

**In the presence of :**

**Mr. Nganga for the petitioner.**

**No appearance for the respondent.**