



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**( MILIMANI LAW COURTS)**  
**DiVORCE CAUSE 47 OF 2009**

**T.G.O.....PETITIONER**

**VERSUS**

**I.N.M.....RESPONDENT**

**JUDGMENT**

By a petition dated 6<sup>th</sup> March and filed in Court on 25<sup>th</sup> March, 2009, the Petitioner, T.G.O, prays for orders that the marriage between him and the Respondent be dissolved; the Respondent be ordered to pay the costs of this petition; and that the Court be pleased to order any other alternative relief which it may be pleased to grant.

The petition is based on the grounds that since the celebration of the marriage, the Respondent has treated the Petitioner with cruelty and deserted the matrimonial home.

With regard to desertion, it was the Petitioner's case that the parties got married in November, 2005. He produced a copy of the Certificate of Marriage contracted on that day, the same bearing Serial No. [...]. He also testified that the couple lived together "for about one year", after which she deserted the matrimonial home and severed all links with the Petitioner.

The expression "about one year" is vague. It could mean a period of slightly more or less than one calendar year. It is important to be exact on the date when the offending spouse left the matrimonial home because **Section 8 (1) (b)** of the **Matrimonial Causes Act (Cap.152)** requires that a petition for divorce may be presented to the Court either by the husband or the wife on the ground that the Respondent has deserted the Petitioner without cause for a period of at least three years immediately preceding the presentation of the petition.

It is instructive that the parties herein married in November, 2005. This petition is dated 6<sup>th</sup> March, 2009, and was filed in Court on 25<sup>th</sup> March, 2009. Working it backwards, the desertion should have commenced on or about 25<sup>th</sup> March, 2006, for the same to have lasted at least 3 years before the filing of this divorce petition. For that to be so, and seeing that the parties married on 5<sup>th</sup> November, 2005, the Respondent would have left the matrimonial home around March, 2006 in order to commit the offence of desertion. But that would have been just four months after marriage which does not accord with cohabitation "for about one year" as stated by the Petitioner since the parties married in November, 2005. For this reason, I find that the desertion complained of had not lasted three years from the alleged dated of desertion, and therefore the petition was filed prematurely for purposes of a divorce on the ground of desertion. This leaves us with cruelty as the only other ground on which the petition is based.

The alleged particulars of cruelty as set out in the petition are that the Respondent is domineering, rebellious, abusive, inconsiderate and manipulative. It is also the Petitioner's contention that the Respondent is a woman of ungovernable temper and has habitually used violent and obscene language against the Petitioner. The Petitioner further maintains that the Respondent is a quarrelsome person and vindictive to the Petitioner, and that she has intentionally denied the Petitioner her society at the matrimonial home. Finally, the Petitioner alleges that by her conduct, the Respondent has subjected him to public ridicule, mental torture and stress.

In his testimony, the Petitioner did not expound on these grounds of cruelty but only adopted those allegations as set out in paragraph 7 of the petition as his evidence on cruelty. Taken individually, each of these allegations may have nothing much to write home about. Taken together, however, their total effect can be devastating, especially when meted out by one's spouse. I have no doubt that they have inflicted mental cruelty to the Petitioner and such cruelty can sometimes be more excruciating than physical cruelty. The Respondent did not find it mete or proper to defend the petition. This was her way of demonstrating that she was not bothered about the petition, that she won't care less, and that the Petitioner may do what he will. In a nutshell, I find that this marriage has irretrievably broken down, and that these two can no longer harmoniously live as husband and wife.

I therefore find and hold that the Petitioner has made out a case for divorce, and accordingly make the following orders –

- 1. The marriage solemnized at the Registrar's office in Nairobi in November, 2005 between the Petitioner and the Respondent be and is hereby dissolved.***
- 2. Decree nisi to issue.***
- 3. The decree nisi to become absolute after 3 months on application by either of the parties.***
- 4. Each party to bear its own costs.***

**DATED and DELIVERED at NAIROBI this 26<sup>th</sup> day of April, 2012.**

**L. NJAGI**  
**JUDGE**