

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

Divorce Cause 4 of 2011

S W M.....PETITIONER

VERSUS

J M M.....RESPONDENT

JUDGMENT

The petitioner and the respondent celebrated their marriage under the Marriage Act on 26th May, 2006. Thereafter they established their matrimonial home at Kaloleni Estate, Nakuru. They got one issue of the marriage. Since the celebration of their marriage, they have not lived a happy life. Last year, the petitioner brought this cause to petition for the dissolution of their marriage citing the grounds of cruelty and adultery, specifically that:

- i) when they lost their first child through a miscarriage, the respondent accused the petitioner of procuring an abortion;
- ii) the respondent has disowned their child insisting he is not her biological father;
- iii) the respondent forced the petitioner into having sex with him a week before the former delivered which act caused her to experience premature labour pain and resulted in her undergoing caesarian section;
- iv) the petitioner does not make provision for the petitioner and their daughter and would bring food home which he would eat alone;
- v) the respondent has committed adultery with three ladies, P. W., S and their house help, J.

She has also prayed for the custody of the child.

The petition and the hearing notice were served on the respondent who did not respond and also elected not to participate in the hearing.

Apart from the grounds of adultery, the petitioner has proved that the respondent has been cruel to her. It was cruel for the respondent to disown his child without proof that he was not the biological father; to accuse the petitioner of prostitution; to forcibly have sex with the petitioner just a few days before she delivered and to neglect his family.

The petitioner has averred and I believe that in bringing this petition she has not connived or condoned the aforesaid cruelty or neglect. She has also deposed that the petition has not been brought in collusion with the respondent.

For the reason that the petitioner has proved cruelty and neglect and further that the respondent has not been taking care of their child, this petition succeeds. The marriage between the petitioner and the respondent contracted on 26th May, 2006 is hereby dissolved. There will be a decree *nisi* forthwith. A decree absolute to issue within six (6) months. The custody of the child is awarded to the petitioner.

The respondent to pay costs.

Dated, Signed and Delivered at Nakuru this 26th day of July, 2012.

**W. OUKO
JUDGE**