

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

DIVORCE CAUSE 6 OF 2010

P.B.R.B.....PETITIONER

VERSUS

R.K.B.....RESPONDENT

JUDGMENT

The Petitioner and Cross-Petitioner were husband and wife for a period of twenty-four years when their marriage hit breakage point. The Petitioner's main ground for the Petition is cruelty, and sets out in paragraph 6, of the Petition dated and filed on 27th May 2010, the particularly of cruelty.

In his Reply to the Petition dated 10th June 2010 and filed on 11th June 2010, the Respondent too avers that it is the Petitioner who has been cruel to him, and similarly gives particulars of such cruelty in paragraph 5 of the Reply to the Petition, and also avers that the Petitioner has denied him his conjugal rights due to the continued absence of the Petitioner from the matrimonial home/house, and still continues to do so. The Respondent averred that he has not condoned such acts of cruelty and neither has he presented the Petition in collusion with the Petitioner.

Both the Petitioner and Respondent Cross-Petition pleaded that the marriage between them has irretrievably broken down and should be dissolved.

The Petitioner gave evidence of a tumultuous union, humiliation in the hands of the Respondent, verbal and physical abuse in the presence of the children, being hit on one occasion and sustaining a scar on the lip, arguments over financial issues, embarrassing behaviour like jumping into a swimming pool at a party, an attack, and near strangulation at home, causing the couples children to intervene, and leading to the Petitioner seeking refuge in a hotel for 2 days. The Petitioner also discovered while working in Mombasa, running a restaurant, the Respondent had intimate relations with a Belgian lady called Anne.

The Petitioner testified that she and the Respondent tried to work at their marriage and there were success at times but that the Respondent had an uncontrollable temper, he called her "Satan" when she was praying. What seems to have broken the camel's back is finding the Respondent half-dressed and being massaged by the house-help, a lady. That day the Respondent took off from the house and never returned.

Efforts at the Community level to reconcile them have come to nought. In the circumstances the Petitioner asked for dissolution of the marriage.

The Respondent's tale was not very different. The Respondent came out to me as a go-happy individual. He was clear that husbands and wives or families have marriage problems from time to time. He too had made his positive contribution to the marriage. He provided cars and transport for the family when he was able, but that the Petitioner can be angry and moody, and when so, can erupt and break house crockery, and that she has influenced the children against him.

The Belgian lady was a business partner in Mombasa, and not a lover. He denied making love with the house-help, and that he was ordered to leave the house. He did not do so voluntarily. In the premises, there was no love any longer between them and that the marriage be dissolved.

I have considered both the Petition, and Reply to the Petition by the Respondent. I have also considered their evidence as summarized above. What comes out clearly are two individuals who were once in love with each, married, had a son and a daughter as a blessing to the marriage, but no longer see any love between them. Their happy union has been eroded by suspicion of infidelity on the part of the Respondent with a Belgian lady called Anne, and possibly the house-help over a 2 year period of massage in the house while the Petitioner was away at work. It has also been eroded by acts of cruelty, mutual denial on conjugal rights, and a strong sentence of financial independence by the Petitioner, over the go happy and lucky Respondent.

In such circumstances, it can be said there is no thread or line of linen holding them, and the marriage

may be said to have irretrievably broken down.

In the premises therefore there shall issue a decree NISI dissolving the marriage in terms of Section 15 of the Marriage Act (Cap. 150, Laws of Kenya) to be confirmed upon expiration of 6 months. Each party to bear its own costs.

There shall be orders accordingly.

Dated, signed and delivered at Nakuru this 20th day of July, 2012

**M. J. ANYARA EMUKULE
JUDGE**