



REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Divorce Cause 7 of 2012

R. M. O..... PETITIONER

VERSUS

H.O. N..... RESPONDENT

JUDGMENT

1. The Petitioner, **R.M.O.**, seeks orders for dissolution of her marriage to **H.O.N.**, the Respondent, on the ground that the latter has since the celebration of the marriage treated the Petitioner with cruelty.
2. The marriage between the Petitioner and the Respondent was solemnized at the Registrar's Office on 3rd December 2004 under the Marriage Act, Cap.150.
3. The law applicable to the marriage is the Matrimonial Causes Act, Cap 152, of the Laws of Kenya whose Section 8 (1) (c) stipulates that cruelty is a ground for dissolution of marriage.
4. The Petitioner reiterated in her evidence the averments in the Petition and the particulars of desertion and cruelty which include the allegation that:
 - (a) On 30th May 2005 without any provocation and or cause the Respondent deserted the matrimonial home never to come back to date.
 - (b) The Respondent has denied the Petitioner her conjugal rights since 2005 to date.
 - (c) The Respondent is cohabiting with another woman openly exposing the Petitioner to mental torture.
5. It was the Petitioner's evidence that cohabitation between the parties ceased on 30th May 2005.
6. For evident of cruelty to constitute legal cruelty and to be a ground for dissolution of marriage, it must be shown that the conduct of the guilty party made it impossible for the parties to live together reasonably happily and that it is unreasonable to expect the petitioner to continue to bear it (see *N.V.N & Another* (2008) IKLR (G & F) 16). It is accepted in law that law that there does not have be many acts of cruelty and that if one act should be of that description which should induce the court to think that it is likely to occur again and to occur with real suffering, there is no rule that should restrain the court from granting a decree of divorce. The real question that the court has to determine is whether the conduct complained of and its consequences are so deplorable that the complaining spouse must have a remedy.
7. The burden of proving cruelty is on the Petitioner or the party alleging it and the standard of proof is as high as in criminal cases.

8. In the instant case, I have duly examined the evidence adduced and it is my finding that the denial of conjugal rights amounts to cruelty on the part of the Respondent. I therefore find cruelty proved against the Respondent.

9. Accordingly, I allow the Petition against the Respondent.

10. I pronounce a decree of divorce and hereby dissolve the marriage between the Petitioner and the Respondent on the ground of cruelty on the part of the Respondent.

11. In the first instance, a decree nisi shall issue forthwith, and subject to the provisions of Section 15 of the Matrimonial Causes Act, Cap 152, the decree nisi shall be made absolute after the expiry of three months after this pronouncement.

12. Each party shall bear its own costs.

Dated at Milimani Law Courts, Nairobi, on this 22nd day of November 2012.

G.B.M. KARIUKI, SC

JUDGE

COUNSEL APPEARING

Mrs. Morara Ngisa advocate for Petitioner