



**REPUBLIC OF KENYA**

**High Court at Mombasa**

**Divorce Cause 35B of 2009**

**J.K.K.....PETITIONER**  
**=VERSUS=**

**F.M.M..... RESPONDENT**

**JUDGEMENT**

Before this court is the Petition filed on 9<sup>th</sup> June 2009 by the Petitioner **J.K.K** seeking the following prayers:

***“(a) That the marriage between the Petitioner and the Respondent be dissolved and the Decree thereof to issue***

***(2) That the Respondent be condemned to pay the costs of this Petition”***

On her part the Respondent **F.M.M** filed an Answer to Petition as well as a cross-petition on 10<sup>th</sup> July 2009 in which she sought the following prayers:

***“(a) THAT the prayers of the Petitioner be rejected and the petition be dismissed.***

***(b) THAT the marriage between the Petitioner and the Respondent be dissolved on the Respondents cross-petition.***

***(c) THAT the Petitioner be ordered to give the Respondent half share of the matrimonial properties***  
**.....**

***(d) The Petitioner to pay for the maintenance of the Respondent.***

***(e) THAT the Petitioner be ordered to pay the costs of the petition”***

The matter proceeded for hearing before this court on 20<sup>th</sup> September 2012. **MR. AZIZ** Advocate acted for the Petitioner whilst **MR. KENZI** represented the Respondent. Both parties are in agreement that they got married to each other on 14<sup>th</sup> December 2002 at the PCEA Church in Kitui. The Marriage Certificate Serial No. [...] provides sufficient proof of this fact. The parties are also in agreement that their union resulted in the birth of one child a son **E.M.K**. It appears that after the wedding the couple began to experience problems and in October 2008 the Respondent left the matrimonial home taking their son with her.

Each party makes allegations of adultery and cruelty against the other. Both are valid grounds for divorce as set out in Section 8 of the Matrimonial Causes Act Cap 152 Laws of Kenya. On his part the

Petitioner alleges that the Respondent was a woman of ungovernable temper. She was disrespectful and rude towards him. The Petitioner claims that the Respondent stole from him a sum of Kshs.50,000/-. No report was made of this theft to the police or even to any other family member. The Petitioner does not explain the circumstances under which this money was stolen. Was it stolen from his pocket? Had he left the money in the house? The circumstances of this alleged theft are not made clear at all. A more serious allegation by the Petitioner is that the Respondent carried out an abortion without consulting and/or informing him. However under cross-examination the Petitioner admits that the Respondent suffered what is commonly called a miscarriage. A medical report filled out by one '**Dr. Gita Shah**' indicates that the Respondent suffered heavy bleeding during pregnancy and was diagnosed with a missed abortion as a result of a nonviable pregnancy. This is an accident of nature and could not have resulted from any deliberate act on the part of the Respondent. The doctor had no option but to perform an operation to complete the process. I find that this could not have been a deliberate or intentional act on the part of the Respondent. Indeed it was a medical emergency and was treated as such. I thus reject the notion that the Respondent performed an abortion.

On her part the Respondent too has several allegations against the Petitioner. She states that the Petitioner has always been hostile and that she did at one stage leave and return to her parents. The Respondent came to her home. The matter was discussed and she returned. Later the Petitioner would deny her conjugal rights. Due to constant quarrels and abuse and due to the Petitioner's uncaring attitude the Respondent decided to move out of the matrimonial home in October 2008. Although the Respondent claimed to have reported one instance of assault to the police she did not tender any proof that she had made any such report. She did not cite any OB number and did not even indicate which police station she reported to. Neither did the Respondent produce a P3 form as proof of any injury to her person.

On the whole I find that although the parties have made several allegations against each other none of these allegations have been sufficiently proved. Thus no party has sufficiently proved their grounds for divorce. What is clearly evident is that the couple due to marital discord were unable to live together. What is also manifestly clear is that since October 2008 the couple have lived separately. There has been no marital union between them for four (4) years. Clearly this is a marriage that has broken down. What remains is merely a shell. It serves no purpose for this court to seek to maintain a union that has clearly broken down. Both parties seek the dissolution of the marriage. I will allow that prayer. The Respondent told the court that she wished to abandon her prayer for a share of the marital property and her prayer for maintenance. As such I will make no finding on those prayers. Decree nisi to issue to be made absolute within six (6) months of today's date.

**Dated and Delivered in Mombasa this 20<sup>th</sup> day of December 2012.**

**M. ODERO**

**JUDGE**

In the presence of:  
No appearance for Petitioner  
Mr. Kenzi for Respondent