



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NYERI**

**DIVORCE CASE NO. 8 OF 2009**

**J.G.W.....PETITIONER**

**VERSUS**

**C.W.G.....RESPONDENT**

**JUDGMENT**

**J.G.W**, the Petitioner herein, filed a petition seeking to have the marriage between him and one **W.C.G**, the Respondent herein, to be dissolved on the ground of cruelty. It would appear the petition was served but the Respondent did not deem it fit to respond to it hence the same proceeded for hearing as an undefended cause.

The Petitioner testified without summoning the evidence of independent witnesses. He told this court that his marriage with the Respondent was solemnized at the District Commissioner's office, Thika on 28<sup>th</sup> February 1996. He produced a copy of the marriage certificate in evidence as an exhibit. The aforesaid certificate indicates that the marriage was under the Marriage Act. The Petitioner further told this court that their marriage was blessed with three issues namely:

J.W.G            - 16 years

J.K.G            - 11 years

J.M.G - 9 years

The Petitioner stated that their marriage started to experience problems in 1999 leading to their separation in the year 2002. He claimed that the Respondent threw out of the matrimonial home, his personal belongings. He alleged that since then they have lived their separate lives and attempts to reconcile them have failed. It is alleged that the Respondent has been abusive to the Petitioner. It is also alleged that the Respondent denied the Petitioner's relatives visitation rights to their matrimonial home.

I have considered the evidence tendered by the Petitioner. I have also perused the grounds set out on the face of the Petition and the facts deponed in the verifying affidavit. In the petition the Petitioner has prayed for the following orders:

- (a) ***The marriage between the Petitioner and the Respondent be dissolved.***
  
- (b) ***The Petitioner be granted access and visitation rights of the minor children.***
  
- (c) ***The Respondent be enjoined against removing the minor children from the jurisdiction of Kenya without the knowledge, consent and written authority of the Petitioner or leave of the court.***
  
- (d) ***Any other and/or further relief this Honourable court may deem fit and just to grant in the circumstances.***

The Petitioner has produced as an exhibit in evidence a copy of a court order issued by the Children's Court, Thika vide **THIKA CHILD CASE NO.[....]** It would appear from the aforesaid order that prayers (b) and (c) of the petition were given hence there is no need to revisit the same before this court. The Petitioner appreciated this fact and that is why he did not insist on pursuing the other prayers save for prayer (a). The thrust of the Petitioner's case is cruelty on the part of the respondent. This Court clearly stated the ingredients which must be established in order to prove the ground of cruelty in the case of **MEME =VS= MEME [1975] K.L.R. at p 18** as follows:

***“For cruelty to be established two tests must be satisfied: first, whether the conduct complained of is sufficiently grave and weighty to warrant the description of being cruel, and secondly, whether the conduct has caused injury to health or reasonable apprehension of such injury.”***

Let me now see whether the case before this court meets the above tests. It is alleged that the Respondent has on many occasions insulted the Petitioner. It is also alleged that the respondent has refused any visitation rights to the Petitioner's relatives and or friends to the matrimonial home. In my view the aforesaid accusations are so grave that they can affect somebody psychologically. If relatives and friends of one spouse are denied visitation rights by the other, that will obviously cause stress and mental anguish. One can imagine the stress one undergoes if his or her uncles, nieces and other relatives are denied access to the matrimonial home. In my humble opinion, I think the Petitioner has ably established that the respondent was cruel to him. Consequently he is entitled to prayer (a) of the petition. In the end I order the marriage between the Petitioner and the respondent dissolved. A decree nisi do issue immediately and the same be made absolute after a period of three(3) months. I will not make any order on costs since the Petitioner did not ask.

*Dated and delivered at Nyeri this 11<sup>th</sup> day of February 2011.*

**J. K. SERGON**

**JUDGE**

In open court in absence of the parties.