



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MOMBASA**  
**(Coram: Ojwang, J.)**  
**DIVORCE CAUSE NO. 31 OF 2008**

**E.T. M .....PETITIONER**  
**- VERSUS -**  
**R.W .....1<sup>ST</sup> RESPONDENT**  
**M.M.M.....2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

The Petitioner married 1<sup>st</sup> respondent on **22<sup>nd</sup> November, 1999** at the District Commissioner's office, Nyeri and, thereafter, the two lived and cohabited as husband and wife, both in Nyeri and in Mombasa. The 1<sup>st</sup> respondent came into the marriage with one of the children in the family, **T.G**, who was born in **1996** and is now aged 15; and another child, **L. R**, was born in **2002**.

Currently based in Mombasa, the petitioner being an employee of [.....], and 1<sup>st</sup> respondent an employee of [.....]Supplies, the couple has not enjoyed good matrimonial relations for some time; the petitioner pleads that since 2000, 1<sup>st</sup> respondent has subjected him to physical and mental cruelty, apart from engaging in acts of adultery. Of these incidents, the petitioner sets out particulars as follows:

- (i) in 2000, 1<sup>st</sup> respondent deserted the matrimonial home for six months;
- (ii) on one occasion between **2000** and **2001** the petitioner found 1<sup>st</sup> respondent in a compromising situation with the father of **T.G**;
- (iii) since **2005**, 1<sup>st</sup> respondent has committed adultery with 2<sup>nd</sup> respondent, who is cousin to the petitioner;
- (iv) since early **2007**, 1<sup>st</sup> respondent has formed a relationship with 2<sup>nd</sup> respondent which excludes the petitioner;
- (v) 1<sup>st</sup> respondent has gloated over her plural liaisons, and has remarked to the petitioner that he even has no certainty that **L.R** is truly his biological son;
- (vi) 2<sup>nd</sup> respondent has arrogated to himself matrimonial roles belonging to the petitioner, without the petitioner's knowledge;
- (vii) 1<sup>st</sup> respondent has shown disrespect to the petitioner by ridiculing his male role;
- (viii) the conduct of the two respondents proved so offensive that, in **August, 2007** the petitioner had to leave the matrimonial home, and set up a separate life;
- (ix) 1<sup>st</sup> respondent has defied marriage counselling, and stays out late in the company of 2<sup>nd</sup> respondent.

The Petitioner pleads that the marriage between himself and 1<sup>st</sup> respondent has irretrievably broken down and the parties now lead independent lives.

The petitioner avers that this petition is not prosecuted in collusion with 1<sup>st</sup> respondent or any other person who may be interested in there being a divorce; and he asks that the marriage be dissolved; that he be given custody/access in respect of **L.R.** He asks that the respondents be condemned in costs.

The 1<sup>st</sup> respondent, in her answer-to-petition dated **5<sup>th</sup> August, 2008** denies the charge of cruelty and adultery, and the particulars stated by the petitioner; she avers that it is the petitioner who has treated her with cruelty on several occasions since the marriage was celebrated. She asserts that the petitioner is guilty of desertion, "*since he has moved out of the matrimonial home..... and has also committed adultery by living and staying with another woman*".

This matter was heard on **5<sup>th</sup> July, 2010** learned counsel **Mr. Kirui** representing the petitioner, but the respondents, though duly served with hearing notice, were unrepresented.

The petitioner, as PW1, gave testimony confirming the content of his pleadings in the petition. He said his marriage to 1<sup>st</sup> respondent had taken place in **1999**, and was followed with a church wedding in **2000**. The 1<sup>st</sup> respondent came into the marriage with a child, **T.G**, whose father was known to the petitioner; and in **November, 2002** another child, **L.R**, was born to the couple.

From the very beginning, matrimonial relations were strained, with 1<sup>st</sup> respondent returning to her parents' home and remaining there for a period of six months. After the petitioner's transfer from Nyeri to Mombasa, in **2004** some more stress afflicted his family: while he was hospitalized in **2006** he had invited his cousin, 2<sup>nd</sup> respondent, whom he provided with accommodation, but who later wormed himself into a snug relationship with 1<sup>st</sup> respondent, driving a wedge between her and the petitioner: as the three went out visiting she would smugly bluster "*she was a proud owner of two husbands*". In the following days the petitioner, on return from work, had witnessed the respondents sitting intimately in one chair; he would find the two at the discotheque together; and the two would stay out long hours, returning home in the small hours of the morning; the two would go out as boy-friend and girl-friend; on one occasion the petitioner found 2<sup>nd</sup> respondent's clothes in the wardrobe that the petitioner shared with his wife. According to the petitioner, his cousin (2<sup>nd</sup> respondent) had displaced him from his matrimonial perch. The petitioner was forced to move out of the matrimonial home. He asked the Court to dissolve the marriage.

Learned counsel, **Mr. Kirui** urged that the petitioner's case was crystal-clear and there was no need to make any submissions.

The purpose of marriage is to provide emotional support for the parties, and to give a structure for mutual sustenance in respect of those workaday activities that move the process of living. When those in the marriage relationship no longer jointly occupy their base, the matrimonial home, the set-up for marriage is undermined; when the primary incidents of the marriage-bond, such as intimacy, kind feelings and emotional support, are nullified, the marriage relationship becomes burdensome; when the exclusive sensations and joys of the marital union are opened out to outsiders, its precious bond is severed, and there is no further business holding the parties together; the only solution is **divorce**, as it sets the parties at liberty to rearrange the emotional aspect of their lives.

In the case of the parties to the marriage herein, all those bonds have collapsed, and to be fair, the petitioner must be set at liberty.

I hereby grant the petitioner a decree *nisi* of divorce, which is to be made absolute subsequently, upon a suitable application being made. The petitioner is granted unlimited access to the child of the marriage **L. R.** Each party shall bear own costs.

**DATED and DELIVERED at MOMBASA this 1<sup>st</sup> day of April, 2011.**

.....  
**J. B. OJWANG**  
**JUDGE**