



**G.G.M..... PETITIONER**

**V E R S U S**

**J.W..... RESPONDENT**

**J U D G M E N T**

The petitioner and the respondent were on 22<sup>nd</sup> August, 1998 married at the Registrar’s office in Nairobi. The marriage was celebrated under the **Marriage Act**. Prior to the celebration of the said marriage, the petitioner and the respondent had cohabitated together as husband and wife from 1988. The marriage was blessed with four children who are now aged between 7 and 21 years. The petitioner and the respondent cohabited together in various estates in Nairobi before they were separated on 17<sup>th</sup> October 2005. According to the petitioner, the respondent had since the celebration of the marriage treated him with cruelty. In particular, he accused the respondent of assaulting him on several occasions during the subsistence of the marriage. He averred that the respondent had attempted to poison him on one occasion during the marriage. He stated that the respondent had issued death threats to him on several occasions. He accused the respondent of taking away some of their property without his permission from the matrimonial home. He averred that the respondent deserted from the matrimonial home on 17<sup>th</sup> October 2005. Since then the petitioner and the respondent had lived separately. According to the petitioner, his marriage to the respondent had as a result irretrievably broken down. He averred that the respondent’s conduct was such that it had caused him to suffer physical, psychological and emotional distress. He urged the court to grant his petition for divorce.

When the respondent was served, she duly entered appearance and filed an answer to the petition. She also filed a cross-petition for divorce. In the answer to the petition, she denied the allegations made by the petitioner that she had treated the petitioner with cruelty or that she had deserted from the matrimonial home. She put the petitioner to strict proof thereof. In her cross-petition she averred that it was the petitioner who treated her with cruelty. In particular, she accused the petitioner of physically and mentally abusing her during the subsistence of the marriage to an extent that the marriage became untenable. She accused the petitioner of being a person of uncontrollable temper and also being a person of loose morals. She further claimed that the petitioner was irresponsible and had neglected his duties as a parent to their children. It was on account of the above facts, that the respondent urged the court to grant her cross-petition for divorce.

At the hearing of the petition, although the respondent was served with the hearing notice for the day the petition was scheduled to be heard, she failed to attend court. This court having been satisfied that the hearing notice was properly served, ordered the petitioner to proceed with his case, the absence of the respondent notwithstanding. In his testimony, the petitioner essentially reiterated the contents of his petition. He testified that the respondent had assaulted him to an extent that he made the decision to lodge a criminal complaint with the police. He explained that since 17<sup>th</sup> October, 2005, he had been separated from the respondent. Having carefully evaluated the facts of this case, it was clear to the court that the petitioner established the grounds of cruelty and that of desertion to the required standard of proof on a balance of probabilities. The petitioner and the respondent have been separated for more than five years. The circumstance leading to their separation was acrimonious. It is unlikely that marital harmony would be restored in the relationship between the petitioner and the respondent. Their marriage has indeed irretrievably broken down.

In the premises therefore, the marriage that was celebrated between the petitioner and the respondent on 21<sup>st</sup> August 1988 at the Registrar’s office in Nairobi is hereby dissolved. Decree nisi dissolving the said marriage is hereby issued. The decree nisi shall be made absolute thirty (30) days from the date of this judgment. There shall be no orders as to costs.

DATED AT NAIROBI THIS 20<sup>TH</sup> DAY OF MAY 2011

L. KIMARU  
J U D G E