



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**DIVORCE CAUSE NO. 118 OF 2007**

**B E T W E E N**

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

**V E R S U S**

**R.M.K.....** **RESPONDENT**

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

The petitioner and the respondent started cohabiting together as husband and wife in a come-we-stay relationship in 1997. However, they formalized their marital relationship on 2<sup>nd</sup> December 2000 when they got married at the Registrar's office in Nairobi. The said marriage has been blessed with two children, both sons, born respectively on 12<sup>th</sup> August, 1999 and 23<sup>rd</sup> October 2002. The petitioner had a son born on 25<sup>th</sup> September 1989 prior to her marriage. Soon after the celebration of the said marriage, the petitioner and the respondent lived together as husband and wife in various estates in Nairobi. According to the petitioner, the respondent started treating her with cruelty a few years after the celebration of the said marriage. In particular, she averred that the respondent became a drunkard, and when drunk unnecessarily picked quarrels with her and even became extremely aggressive. She complained that due to the respondent's drunkenness, he became irresponsible and failed to provide the material needs of the family. She accused the respondent of physically assaulting her thus causing her to suffer physical harm and mental anguish. In her testimony before court, the petitioner stated that because of the mistreatment that she was subjected to, she separated from the respondent in September 2007. The petitioner was of the opinion that due to the respondent's cruelty, her marriage to the respondent had irretrievably broken down. In court, the petitioner testified that although attempts at reconciliation had been made, it did not bear any fruit. She therefore urged the court to grant her petition for divorce. She further prayed to be granted custody of the children of marriage.

When the respondent was served with the petition, he duly entered appearance and filed an answer to the petition. He also filed a cross-petition seeking to be divorced from the petitioner. In the answer to the petition, the respondent denied that he had been cruel to the petitioner as alleged in the petition for divorce. He instead accused the petitioner of being cruel to him. He stated that the petitioner was a person of ill temper and violent disposition who had, on several occasions, physically assaulted and harassed him. The respondent complained that during the subsistence of the marriage, the petitioner had failed to show him any love and affection. He stated that because of the petitioner's behaviour, he had suffered mental anguish, ill health, loss of self esteem and persistent emotional distress. He was of the view that his marriage to the petitioner had indeed irretrievably broken down with no chance of being salvaged. He urged the court to grant his cross-petition for divorce.

During the hearing of the divorce case, although the respondent was served with the hearing notice to attend court, he failed to make such an appearance. This court directed the petitioner to proceed with her case, the absence of the respondent notwithstanding. In her testimony before court, the petitioner basically reiterated the contents of her petition for divorce. This court has carefully considered the facts of this divorce cause. It was clear from the evidence adduced by the petitioner that she established, to the required standard of proof on a balance of probabilities, that indeed her marriage to the respondent has irretrievably broken down with no chance of being salvaged. The petitioner told the court how the respondent verbally and physically assaulted her to an extent that she was forced to leave the matrimonial

home in September 2007. She narrated how the respondent, due to his love for alcohol, had neglected his duties as both a husband and a provider for the family. Since the couple was separated in September 2007, attempts to reconcile them has been in vain. If the petitioner and the respondent were to be reconciled, then in the intervening period of four years between the time they were separated and the hearing of this divorce case, they would have been so reconciled. In his cross-petition, the respondent was of a similar view with the petitioner that indeed the marriage had irretrievably broken down. In the premises therefore, this court will grant the petition for divorce on the grounds of cruelty and desertion.

The marriage solemnized between the petitioner and respondent on 22<sup>nd</sup> December 2000 at the Registrar's office in Nairobi is hereby dissolved. Decree nisi dissolving the said marriage is hereby issued. It shall be made absolute thirty (30) days from the date of this judgment. The petitioner shall have the custody of the children of the marriage. There shall be no orders as to costs.

**DATED AT NAIROBI THIS 13<sup>TH</sup> DAY OF MAY 2011**

**L. KIMARU  
JUDGE**