



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**DIVORCE CAUSE NO.140 OF 2009**

**Z.A.R.....PETITIONER**

**VERSUS**

**Z.A.R.....RESPONDENT**

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

The petitioner and the respondent were married on 28<sup>th</sup> June 2006 in Johannesburg South Africa under **Sunni Muslim Marital Rites**. After the celebration of the said marriage, the petitioner and the respondent cohabitated together as husband and wife in South Africa and in Pakistan. The petitioner and the respondent stopped cohabitation in June 2009. According to the petitioner, the marriage was blessed with one issue born on 5<sup>th</sup> September 2007. The petitioner prays for court to dissolve the marriage on the ground that the respondent has been guilty of cruelty to the petitioner and the child of the marriage. In particular, the petitioner complained that the respondent had subjected her to degrading and inhumane conditions by refusing to provide her and the child of the marriage with sustenance to the extent that the petitioner developed jaundice. She averred that the respondent failed to provide financial support for her and the child of the marriage to the extent that she was forced to seek employment while they were residing in Pakistan. She accused the respondent of failing to facilitate her medical treatment thereby forcing her to rely on her parents for such treatment. She stated that the respondent undermined her self-confidence by ridiculing her and failing to appreciate her role as a wife in the family. She averred that the respondent verbally abused her to the extent that she could no longer tolerate sustaining the marriage. Because of the foregoing, the petitioner urged the court to grant her petition for divorce.

The respondent was served with a copy of the petition by substituted services. He was served in Pakistan. The respondent did not enter appearance. Neither did he file answer to the petition. The hearing of this petition therefore proceeded as an undefended divorce cause. The court heard the oral testimony of the petitioner. The petitioner basically reiterated the contents of the petition. This court has carefully evaluated the said evidence. It was clear to the court that the petitioner indeed proved the ground of cruelty pleaded in her petition for divorce. The petitioner established that she was mistreated by the respondent and by members of his family especially when the petitioner and the respondent relocated to the family home in Pakistan. The respondent failed to provide for the upkeep of the petitioner and the child of the marriage. The respondent refused to provide medical treatment for the petitioner. The respondent verbally abused the petitioner and also physically abused the child of the marriage to the extent that the petitioner was psychologically tortured. All these acts of cruelty narrated by the petitioner were uncontroverted. It was clear to the court that the marriage between the petitioner and the respondent had irretrievably broken down with a very remote chance that it will be salvaged. Since the petitioner returned to Kenya to her parents in June 2009, the respondent has not made any effort to be reconciled

with the petitioner.

In the premises therefore, the marriage that was celebrated between the petitioner and the respondent on 28<sup>th</sup> June 2006 in Johannesburg South Africa is hereby dissolved. *Decree nisi* dissolving the said marriage is hereby issued. The said *decree nisi* shall be made absolute thirty (30) days from the date of this judgment. The issue of custody of the child of marriage has already been resolved by the Children's Court Nairobi. There shall be no orders as to costs.

**DATED AT NAIROBI THIS 12<sup>TH</sup> DAY OF MAY, 2011**

**L. KIMARU**

**JUDGE**