



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT ELDORET
DIVORCE CAUSE NO. 10 OF 2010

J.K.....PETITIONER

=VERSUS=

H.J.S.....RESPONDENT

JUDGMENT

In his petition filed on 24th August, 2010, **J.K.**, (hereinafter “**the petitioner**”), seeks dissolution of his marriage to his wife, **H.J.S.**, (hereinafter “**the respondent**”) on the single ground of cruelty. In his particulars of cruelty, the petitioner states, *inter alia*, that the respondent on several occasions, in the presence of their children and relatives, abused him; that the respondent has on several occasions denied him food; that she has persistently arrived home late without explanation; that she has denied the petitioner conjugal rights and frequently stated that there are other men who are interested in her; that she has refused to take care of their children and threatened to poison the petitioner. In those premises, the petitioner contended that his marriage to the respondent had irretrievably broken down and should be dissolved and that he be granted the custody of the issues of the union namely: **I.K.**, born in 2001, **A.K.**, born in 2003 and **C.K.**, born in 2006.

When the respondent was served with the petition, she filed no answer, with the result that when the same came up before me for hearing on 9th May, 2011, it proceeded *ex-parte*. In his oral testimony in court, the petitioner stated in the main as follows: - They married under Customary Law in March 2000 and solemnized the union at the Attorney General’s Chambers on 5th June, 2007. They lived and cohabited in Nairobi where the petitioner now stays. They have three children namely, **I.K.**, born in 2001, **A.K.**, born in 2003 and **C.K.** born in 2006. The marriage was happy upto the year 2004, when the respondent started coming home late and when asked about the same, would respond with abusing the petitioner in the presence of the children. In 2005, the respondent denied the petitioner access to her room. The respondent’s behavior caused the petitioner stress for which he was hospitalized in 2006 and 2007. The petitioner sought the intervention of his and the respondent’s siblings without success. In the year 2008, the respondent left the matrimonial home in Eldoret and has since not resumed cohabitation.

In those premises, the petitioner testified that his marriage to the respondent had irreparably and irretrievably broken down and should be dissolved. He also prayed for custody of the said children.

Having considered the evidence adduced before me, I am satisfied that the petitioner has satisfactorily demonstrated the grounds of cruelty. The respondent is guilty of misconduct of a grave and weighty nature. The misconduct caused real injury to the petitioner’s health. In any event, the respondent did not deny the cruelty demonstrated by the petitioner. The respondent has no interest in the marriage and I find

that the same has irretrievably broken down. The respondent has also no interest in the children of the union. In the end, the marriage between the petitioner and the respondent is hereby dissolved. Decree *nisi* shall issue forthwith and the same shall be made absolute after one month.

Custody of the children of the marriage is granted to the petitioner. The respondent shall however have reasonable access on prior notice to the petitioner.

Each party shall bear his/her own costs.

Orders accordingly.

DATED AND DELIVERED AT ELDORET THIS 13TH DAY OF JUNE, 2011.

**F. AZANGALALA
JUDGE.**

Read in the presence of:-

Mr. Keter for the petitioner.

**F. AZANGALALA
JUDGE.
13/6/2011.**