

REPUBLIC OF KENYA.

IN THE HIGH COURT OF KENYA

AT KITALE.

DIVORCE CAUSE NO. 2 OF 2009.

GWM :..... PETITIONER.

VERSUS

JMW.....RESPONDENT.

J U D G M E N T.

1. The petitioner applied for the dissolution of the marriage solemnized with the respondent at the Registrar's Office in Mombasa on 29th August, 2003. Prior to the solemnization of the marriage, the petitioner was a widower and the respondent was a single mother of one child. The petitioner had three children with his first wife who passed away and the respondent was a single parent of one child who was born in 1999. After the marriage, the parties cohabited in Mombasa. The petitioner was transferred to Kitale when domestic problems started with the respondent. Due to those persistent problems, the petitioner had filed a separation cause No.[....] before the Chief Magistrate's court which was withdrawn.
2. The petitioner testified that throughout the marriage, the respondent treated him with cruelty. The petitioner recited several grounds of cruelty which are also stated in the petition. The most outstanding incident was on 8th August, 2005, when the respondent attacked the petitioner until he sustained bodily injuries. The respondent was also accused of subjecting the petitioner to humiliation at his place of work, the respondent used to visit the petitioner at his place of work and insult him in the presence of colleagues. One time the respondent stabbed a female colleague of the petitioner with a knife for no apparent reasons. This behavior caused the petitioner humiliation and untold agony.
3. Apart from cruelty, the respondent was accused of having committed adultery and on one occasion the petitioner caught the respondent red-handed with a man at their matrimonial home in Mombasa. The respondent also neglected her wifely and motherly duties and deserted the children for unexplained reasons. She also failed to pay school fees for children when she was left with the money to look after the children and to pay their school fees, she deserted the matrimonial home leaving the children unattended as the petitioner was attending a course in Nairobi. According to the petitioner, the marriage is irretrievably broken down. He has not colluded with the respondent to bring this suit and he did not condone the violence and the acts adultery.
4. The respondent was served with this petition, apparently, she was serving a jail term thus she was served through the prison authorities. The respondent was escorted to court and the court gave her time to file her answer and cross petition. When she returned to court on 12th April, 2011, she told the court that she had no intention to file an answer thus the matter proceeded for hearing as an undefended cause. The petitioner's case is not controverted. I am satisfied that the petitioner proved the allegations contained in the petition.
5. Although the petitioner prayed for the custody of the children, two of the children are of age except for JMW. IN is the biological child of the respondent, he is still below the age of majority the petitioner testified that he has always had the custody of the children. The Petitioner is obviously entitled to the custody of his children, but for IN, he can be entrusted to his custody care and control while the respondent will be at liberty to apply.

6. According the marriage that was solemnized between the petitioner and the respondent is hereby dissolved. A *decree nisi* shall issue for a period of 3 months. If no application is made after 3 months, this decree shall be made absolute. Since the respondent did not file an answer, the petitioner shall meet his own costs of this petition.

Judgment read and signed this 29th day of July, 2011.

**MARTHA KOOME.
JUDGE.**