



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MALINDI**  
**DIVORCE CASE NO.7 OF 2010**

**L.B.....PLAINTIFF**

**-VERSUS-**

**A.A.M.....DEFENDANT**

**JUDGEMENT**

**L.B** (The Petitioner) has filed for divorce from **A.A.M** (The Respondent). The parties met in M[...], Lamu and married at the Lamu District Commissioner Office under the Marriage Act 9Cap 150) in 1998. A copy of the marriage certificate is produced as EA. Thereafter they cohabited in Lamu, Lamu, M[...] and N[...]. There were no issues to the union although the couple took the Respondent`s niece, one **M.M.M** whom they lived with and treated as their own. As a matter of fact the Petitioner paid her school fees and catered for her well being. This is because the child`s mother (a sister to the Respondent), was a sickly, unemployed single mother. Due to certain medical conditions both Petitioner and Respondent could not have biological children, and this was a fact known to both of them. The Petitioner works as a Regional Program Manager with [PARTICULARS WITHHELD] Program while Respondent is unemployed. Soon after the celebration of the marriage, the Respondent treated the Petitioner with cruelty and disdain and committed adultery with one **G.R.**

The particulars of cruelty are pleaded as follows;-

- a) The Respondent has been rude and has always harassed the Petitioner with abusive phone calls and unfounded allegations of infidelity.
- b) During the first two years of the marriage the respondent would tell the Petitioner that she made a mistake in marrying him and that she would leave him.
- c) The Respondent has continuously sent the Petitioner abusive text messages, calling the petitioner paedophile and a homosexual.
- d) The Respondent has physically attacked the Petitioner on several occasions and on one occasion Petitioner was attacked in the bedroom in May 2004. The Petitioner had to flee and leave the house due to fear for his life. In January 2008, the Respondent attacked the Petitioner and house guests, denied the Petitioner access to his blood pressure pills by locking them in the bedroom. During one of her violent stunts, the Petitioner and the guests had to lock themselves in the bedroom and to avoid further attacks. The Respondent`s only stopped her attack when police were called.
- e) Respondent has, on another occasion attacked the Petitioner using a baseball bat.

f) On several occasions, the Respondent denied the Petitioner access to the bedroom and poured water on the matrimonial bed so that petitioner could not sleep in the bedroom.

On the night of 4<sup>th</sup> and 5<sup>th</sup> July 2010, the Respondent attacked the Petitioner repeatedly with a large knife, threw small knives at him and used other metal objects to attack him, forcing the Petitioner to seek refuge on the roof of the terrace room where he locked himself to avoid further attacks.

The Respondent has caused the Petitioner untold mental, physical and psychological, anguish during the larger part of the marriage and the Petitioner now lives in perpetual fear of the Respondent. The Respondent did not file any answer to the Petition and the matter proceeded as an undefended cause. The Petitioner narrated to this court how from the early stage of their marriage, the Respondent always lamented that she had made a mistake marrying him and was always at the brink of running away from the matrimonial home. She complained of boredom and wanted life on the fast lane, which included going to discos. Petitioner is much older than the Respondent and tried to talk to her to calm her raging character which got worse over the last five years.

It was the Petitioner`s testimony that when they lived in M[.....] the Respondent complained of too much boredom, so she went to live in N[....]. She then said she wished to start a “*mitumba*” business, and the Petitioner gave her capital to start the business. However, the same collapsed after two months. Since Petitioner was working in Ethiopia, he invited her there, hoping that perhaps a change of scene would help improve the relationship. The Respondent continued with her acts of violence which included attacking the Petitioner`s Ethiopian staff members in October 2010.

Once, in the course of duty, the Petitioner was assigned to Afghanistan for duties, and due to the war in that country then, workers were not allowed to take their families. The Respondent was then left in Kenya – which gave her an opportunity to get into an intimate relationship with the Petitioner`s workmate and friend. It is the Petitioner`s evidence that Respondent carried on with the relationship as though she was single and when the Petitioner asked her about it she confirmed that and even informed him that she had slept with the said individual.

Not to give up easily, the Petitioner took the Respondent to Switzerland to visit his family, but she refused to meet his family members, threatening to create a scene at the hotel room if the Petitioner forced her to such a meeting. She would then make phone calls to Petitioner`s family members and insult them. Currently the Petitioner and Respondent are not communicating – he has refused to talk to him, denied him access to the house by keeping the house help and placing guards at the house.

In 2007, the couple went to see a counselor and were supposed to go for follow up sessions. However Respondent only made the maiden visit then refused any further counseling services. Petitioner has tried to use their friends and family doctor to talk to the Respondent, in vain and it is his testimony that whenever he makes any attempts at reconciliation, she becomes more and more upset. The Respondent has now taken to engaging people to follow Petitioner, and he has become so scared that he even fears coming into Kenya. This is why he asks to be allowed to be released out of this relationship.

From what is narrated before this court, the marriage has been riddled with harassment and violence by Respondent who is not only physically aggressive, but also intimidates and causes the Petitioner embarrassment. She has displayed outright cruelty by making it impossible for him to enjoy any peaceful conditions at the home, always engaging Petitioner in combat. Mentally he is a besieged man, having a wife who not only outrightly regrets having married him but opening involved herself in another relationship with his friend and even admits to sleeping with another man.

The Petitioner has proved that since the celebration of the marriage, Respondent has treated him with extensive cruelty this satisfy one of the grounds for divorce as provided by section 8 (1) ( c) of the Matrimonial Causes Act (Cap 152). I therefore grant his prayers and order that the union between the B and A.A.M be dissolved by way of divorce as prayed. A decree nisi shall issue and be made absolute at the expiry of 6 (six) months.

**DELIVERED AND DATED THIS 22ND DAY OF JULY 2011 AT MALINDI**

**H A OMONDI  
JUDGE**

**Mr Angima holding brief for Mr Ole Kina**

**Mr Mwadilo holding brief for Khaminwa**