



**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**DIVORCE CAUSE NO. 98 OF 2006**

**A.K.O.....PETITIONER**

**VERSUS**

**M.A.O.....RESPONDENT**

**JUDGMENT**

This is a divorce petition on ground of cruelty. The facts of the case are these. The parties married on 18<sup>th</sup> December 1999 at Don Bosco Catholic Shrine in Nairobi. They thereafter lived and cohabited in Nairobi and were blessed with two issues, S.O born on 21<sup>st</sup> September 1995 and J.M.O. born on 14<sup>th</sup> December 2000.

The Petitioner avers in his petition that the Respondent has treated him with cruelty. He complains that the Respondent has on diverse dates treated the him with contempt; endless nagging; haranguing and insults; used abusive language towards him in presence of their children and other people; often sought to embarrass him before his friends and colleagues; insulting him and his parents calling them names in presence of friends and relatives and coming home late sometimes even after midnight without an explanation.

The Petitioner further averred that they have, in Milimani PMSC No[...] been separated since 9<sup>th</sup> September 2003. Prior to that, she had deserted the matrimonial home from 28<sup>th</sup> January 2002.

Upon being served the Respondent filed an answer to petition and cross- petitioned for divorce on grounds of cruelty and adultery. She denied all allegations against her of cruelty and averred that if anything it is the Petitioner who caused the breakdown of their marriage by his adulterous acts. Due to constant harassment and assault on several occasions she was forced to vacate the matrimonial home.

On the ground of cruelty the Respondent averred that on diverse dates the Petitioner has assaulted her in the presence of their children and parents in law resulting in a report being made to police. On adultery she averred that on diverse dates before the separation order was issued the Petitioner committed adultery with one M and with one Y after the separation.

At the hearing both parties testified and neither called any witnesses. The Petitioner testified that their marriage has not been a happy one. He said besides threatening to kill him, on diverse dated the Respondent went to his office and caused chaos. In May 2001 she told him in the presence of his parents

that he was not man enough to share a bed with him. He denied being cruel to her and admitted that he has had an affair with Y. He therefore prayed for divorce and custody of their surviving child who is about 16 years old.

On her part the Respondent testified that the Petitioner had assaulted her on several occasions. She said in January 2002 she went to visit her sister with their young daughter and left her behind because it was late. When she went home the Petitioner viciously assaulted her and caused her to sleep in the sitting room. She reported the matter to police who charged the Petitioner but she later withdraw her complaint. Though she had cross petitioned for divorce she said she would rather they remain separated so that she is able to visit her late daughter's grave at the Petitioner's home. Regarding the custody of their daughter she said though the Petitioner has been with her for the last ten years, as he had had two other children with another woman, the custody of their daughter should be given to her.

I have considered the matter. On the evidence on record I am satisfied that the marriage between the parties has not been a happy one. It is clear to me that the parties have traded insults. The Petitioner has admittedly committed adultery and is now living with another woman with whom he has had two children. I accept the Respondent's evidence that in January 2002 the Petitioner assaulted her and he was charged in court but she later withdrew the complaint leading to his discharge. I also accept the Petitioner's evidence that the Respondent has been abusive towards him and treated their marriage contemptuously.

As stated the parties have been separated since 10<sup>th</sup> September 2003. On the evidence on record I am satisfied that both the petition and the cross petition have satisfactorily been proved. The marriage between the parties has irretrievably broken down and there is nothing left of it. It cannot be sustained simply to enable the Respondent to take flowers to her daughter's grave at the Petitioner's home. There is nothing on record to show that on dissolution of marriage she cannot do that. In the circumstances I hereby dissolve the marriage between the Petitioner and the Respondent. A decree nisi shall issue forthwith to be made absolute after a period of 30 days. The Petitioner having had the custody of their daughter for the last 10 years I hereby officially grant him her custody. The Respondent shall however have unlimited access to her at agreed times. Each party shall bear its own costs.

**DATED and delivered this 17<sup>th</sup> day of July 2011.**

**D.K. MARAGA  
JUDGE**