



**REPUBLIC OF KENYA.**

**IN THE HIGH COURT OF KENYA**

**AT KITALE.**

**DIVORCE CASE NO. 2 OF 2010.**

**RNM .....PETITIONER.**

**VERSUS**

**RMG .....RESPONDENT.**

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

1. **R.N.M.**, the petitioner herein, petitioned for the dissolution of the marriage with **R.M.G.** (respondent) which was solemnized on 3<sup>rd</sup> March, 2006 at the District Commissioner's Office at Kitale. Upon marriage, the parties cohabited as husband and wife at M[...] Estate in Kitale. There are no children between the parties. According to the petitioner, the respondent treated her with cruelty throughout the period they stayed together on account that she was unable to bear children for him. The petitioner complained that the respondent started calling her a barren woman and it was a waste of time for him to engage in sex or to provide support to the petitioner who was good for nothing according to the respondent.

2. The petitioner accused the respondent of committing adultery with other women and in particular having an adulterous relationship with a woman called **G.A.** out of which adulterous relationship there is a child born with the respondent in 2008. The petitioner further alleged that the respondent had brought a woman in their matrimonial home thus the marriage is irretrievably broken down. In further evidence to support the above grounds, the petitioner testified that before she got employment that necessitated her to move to the United Kingdom, the respondent had started mistreating her for failure to bear children. The respondent would spend nights out of the matrimonial home, and as if that was not enough, he would refuse to talk to the petitioner which caused the petitioner agony.

3. When the petitioner got employment, the respondent wrote a letter authorizing her to travel. The respondent also wrote another letter allowing the respondent to seek a work permit. While working in the UK, the petitioner used to send to the respondent money regularly. She produced a bundle of statements to show the money transactions. However, in 2007 the respondent told the petitioner that he had taken another woman who had borne him a child. The petitioner returned in the country in September, 2010 and found the respondent was already cohabiting with another woman. Thus the petitioner applied for the dissolution of the marriage.

4. The petitioner also relied on the evidence of her mother **M.W.** who testified that sometimes in the course of the petitioner's marriage with the respondent, the respondent used to chase away the petitioner on allegations that she was not capable of bearing him a child. The petitioner used to seek shelter from

this witness. While the petitioner was about to travel from the UK, this witness visited the respondent to inform him of the petitioner's return. She testified that she found another woman with two children who was living in the respondent's house. She therefore advised the petitioner that there was another woman living in her house.

5. The respondent entered appearance and filed an answer to the petition. He denied the allegations of cruelty. He alleged that it is the petitioner who deserted the matrimonial home 4 years ago thus denying him conjugal rights. According to the respondent's answer, he urged the court to dismiss the petitioner's petition. However, when the respondent gave evidence, he admitted that he gave permission to the petitioner to travel and to work in the UK for two years. The petitioner returned after 4 years and went to stay with her parents and when the respondent went to find out why the petitioner was living with her parents, he was informed that she had filed this petition seeking for divorce.

The respondent said he would not force the petitioner to live with him as he does not know how she has been living for the last 6 years so he cannot agree to live with her again. During cross examination, he denied living with a woman called **G.A.** or any woman for that matter. He said the woman who lives in his house is a maid and not a wife.

6. Whichever way one looks at this marriage, although the respondent did not cross petition for divorce, in his evidence, he told the court that he would not wish to live with the petitioner because he does not know how she has been living for the last 6 years when she has stayed in the UK. It is common ground that the parties herein separated sometimes in May, 2006. They have not cohabited ever since. While the petitioner was in the UK, the marriage suffered a strain because she suspected the respondent was having an adulterous relationship with another woman.

7. On the part of the respondent, he contends that the petitioner went on to stay in the UK beyond the period of 2 years thus abandoning him. Going by the evidence on record, I am satisfied that the petitioner has proved that for the period of 3 years immediately preceding the presentation of this petition, the parties have not lived together. The parties have been unable to resume cohabitation for reasons that another woman who the petitioner suspects to be the respondent's mistress is living in her matrimonial home. On the part of the respondent, the woman living in the matrimonial home is a housemaid. Whatever the case, I find this marriage is broken down as demonstrated by the fact that the parties are not even able to communicate. The respondent has not been able to explain the relationship between him and the woman living in his house if indeed she is a house maid.

8. The parties have also been separated for an inordinate long time and for those reasons, I find the petitioner has proved the ground of constructive desertion; she has been unable to return to her matrimonial home due to the presence of another woman which presence, the respondent failed to explain. I also find there is evidence of cruelty when the respondent taunted the petitioner for failure to borne him a child. Accordingly I hereby dissolve the marriage that was solemnized between the petitioner and the respondent. A decree *nisi* shall issue for a period of 3 months and if no application is made, the same decree shall be made absolute. Each party to bear their own costs of this litigation.

**Judgment read and signed this 8<sup>th</sup> day of July, 2011.**

**MARTHA KOOME.  
JUDGE.**