



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI (NAIROBI LAW COURTS)**

**Divorce Cause 25 of 2009**

**A.B.....PETITIONER**

**VERSUS**

**H.M.O.....RESPONDENT**

**JUDGEMENT**

The petitioner herein A.B came to the seat of justice vide a petition dated 5<sup>th</sup> day of January 2009 and filed the same date. The petition is filed against the Respondent. The salient features of the same are as follows:-

- The disputants were lawfully and legally married to each other as per the marriage certificate exhibited.
- They cohabited as man and wife at the numerous places mentioned in paragraph 2 of the petition.
- They have one issue between them named as J.G.O.
- The grounds fronted for divorce are desertion and cruelty. Desertion arises because the Respondent left the matrimonial home in April 2007.

The particulars of cruelty enumerated in paragraph 8 are as follows:-

- (a) Respondent unilaterally decided to stay away from the matrimonial home.*
- (b) Since January 2007 the respondent has been in different towards the petitioner and the petitioners' needs.*
- (c) Has on several occasions since the celebration of the marriage, subjected the petitioner to threats of physical violence thereby causing her intense physical and emotional strain and pain.*
- (d) The Respondent has denied the petitioner her conjugal rights since January 2007.*
- (e) The Respondent has on numerous occasions be litted the petitioner on numerous occasions in person, in front, and through friends, and family and the telephone thereby causing her to lose self esteem, thereby causing her anguish and stress.*
- (f) The Respondent has since January 2007 refused and neglected to maintain the petitioner and the issue of the marriage, thereby exerting lots of pressure and stress on the petitioner.*

In consequence thereof, the petitioner prayed for the following reliefs:-

- (a) *Dissolution of the marriage.*
- (b) *Custody of the issue of their marriage*
- (c) *Maintenance for herself.*
- (d) *Maintenance for the issue of the marriage*
- (e) *Alimony pending suit issue of the marriage.*
- (f) *A secure provisions for herself*
- (g) *Secure provision for the maintenance of the issue of the marriage.*
- (h) *The respondent to pay costs of the proceedings*
- (i) *To be granted any other relief, the court may deem fit to grant.*

The petitioner was the sole witnesses on her side. The sum total of her testimony is that they are duly married to each other, they have one issue, lived happily, shortly trouble started when the petitioner progressed in her career, where as the respondent did not have a good job and felt that the petitioner was belittling him and he started drifting away from her till he never came back to the matrimonial home as from April 2007. Efforts to reconcile them initiated by the petitioner, her mother, and the Respondents mother bore no fruits because the Respondent was disinterested and never attended counseling sessions. He has lost interest in the marriage save for the issue of the marriage whom he has contact with and visits from time to time.

According to PW1, the Respondent has lost interests in the marriage which cannot be salvaged and as such the same should be dissolved. Lack of interest is evidenced by the fact that when served with the petition, he entered appearance, hired counsel to hold a watching brief and filed no papers.

When cross examined, the petitioner confirmed to the court, that the marriage cannot work.

On the courts', assessment of the facts herein, the court proceeds to make the following findings:-

- There is inexistence a valid marriage capable of being dissolved
- The grounds of desertion does not hold since it was not 3 years to the presentation of the petition
- The grounds of cruelty holds in that the allegations have not been disputed and as such they are deemed to have been admitted.
- There is demonstration of lack of interest in the marriage on the part of the respondent demonstrated by lack of filing of any papers.
- The marriage seems to have been broken down and cannot be salvaged and is therefore a proper candidate for dissolution.
- The petitioner abandoned prayers for maintenance and costs.
- The petitioner wishes to have custody of the issue of the marriage with visitation rights granted to the Respondent.

Due consideration has been made by this court, of the above findings and the same considered in the light of the content of the petition and testimony in court, and the court proceeds to make the following final orders:-

1. An order be and is hereby made that the marriage solemnized between the petitioner and the Respondent in the office of the Registrar of marriages on the 25/9/2002 vide marriage certificate number[PARTICULARS WITHHELD] be and is hereby dissolved on grounds of cruelty on the one hand, that the same has become irretrievably broken down and cannot be salvaged more so when the Respondent has lost interests in the same.
2. The petitioner will have custody of the issue of the marriage.
3. The Respondent to have visitation rights to the issue of the marriage. Details to be worked out mutually by the parties with the assistance of their counsels.
4. Decree Nisii to issue forthwith.
5. Decree absolute to issue 6 months after decree Nisii or within such shorter time upon application by either party.
6. There will be no orders as to costs.
7. There will be liberty to apply in terms of order no. 5 above granted to either party.

**DATED, READ AND DELIVERED AT NAIROBI THIS 12<sup>TH</sup> DAY OF FEBRUARY 2010.**

**R.N. NAMBUYE**

**JUDGE**