



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MOMBASA**  
**(Coram: Ojwang, J.)**  
**DIVORCE CAUSE NO. 55 OF 2009**  
P D B.....PETITIONER

-VERSUS-

C O.....RESPONDENT

**JUDGMENT**

The petitioner moved the Court by his petition dated 15<sup>th</sup> October, 2009 seeking divorce from his marriage to the respondent, from whom he was already separated. The petitioner stated that he had cohabited with the respondent at Mtwapa after the celebration of the marriage, but that the respondent had thereafter practised cruelty towards him, apart from engaging in adultery. As a consequence of the said acts, the petitioner stated, he had undergone considerable mental anguish and had lived in awe of the respondent.

The petitioner specified the particulars of adultery as follows:

- (i) the respondent has on various occasions had sex with men unknown to the petitioner;
- (ii) the respondent has gloated to the petitioner about the various other men with whom she is involved;
- (iii) the respondent has withdrawn from the conjugal relationship with the petitioner;
- (iv) out of her adulterous relationships, the respondent has conceived and given birth to a child who is not the petitioner's;
- (v) all through, since February, 2008 the petitioner has had no sexual relationship with the respondent;
- (vi) the respondent turned violent when the petitioner sought to know the paternity of her latest child;

(vii) the petitioner apprehends that the respondent is involved in prostitution and could, in this way, introduce sex-related infections to the family.

The petitioner also gave particulars of the claims of cruelty on the part of the respondent:

- (i) she returns exceptionally late to the matrimonial home, without the knowledge or consent of the petitioner;
- (ii) she frequently issues violent threats at the petitioner;
- (iii) she has chased the petitioner away, and denied him access to the matrimonial home;
- (iv) she humiliates the petitioner, in the full view of strangers;
- (v) she publicly announces that her marriage to the petitioner was a mistake in the first place;
- (vi) she is not available for any discussion or compromise with the petitioner;
- (vii) her cruelty has made the petitioner live in fear of her.

In the light of the foregoing instances, the petitioner alleged that the marriage between the parties herein has irretrievably broken down. The petitioner pleaded that he has not been a party to, nor condoned, nor connived at the alleged commission of matrimonial wrongs.

On the occasion of hearing, learned counsel, **Mr. Bosire** noted that due service of the petition papers had been effected upon the respondent, but she filed no answer.

The petitioner testified that the marriage between him and the respondent had been solemnised on 15<sup>th</sup> July, 2005 but since then the respondent had committed acts of cruelty and adultery, to the prejudice of the marriage vows. The petitioner testified that the respondent had been involved with other men, both outside and within the matrimonial home, during the petitioner's absence; and that quite recently, she was delivered of a baby sired by another man. The petitioner typified the respondent's conduct towards him as "very cruel", and testified that the respondent treated him as if he is "not a husband". The respondent's conduct showed, the petitioner said, that the respondent no longer loves him; and he for his part, "no longer loved her." The petitioner asked the Court to grant him a divorce.

The fact that the respondent, though personally served with the petition papers, did not respond, and did not turn up in Court, shows that the cause was of no materiality to her – and thus she would not mind if an order for divorce was made. But more significantly, the evidence tendered shows unequivocally that there was no will on the part of the respondent to help to uphold the bonds of a functioning marital relationship;

she enjoyed her life outside the marriage; but she abjured the critical sensations that would sustain the family spirit in a context of marriage. Such inclinations on the part of the respondent, bore a legal significance: they injured the petitioner's rights recognised to be part of a marriage relationship. Notable in this regard, the petitioner had no access to his conjugal rights. Other elements in this juristic scenario, are, as the evidence shows, that the matrimonial offences of cruelty and adultery had been committed, to the detriment of the petitioner.

Such a setting of claims favours the grant of orders for divorce. The marriage between the parties, moreover, had clearly broken down irretrievably; and therefore there was no reality of the legal institution of marriage, to be protected by this Court.

Consequently, I hereby grant the decree *nisi* of divorce between the petitioner and the respondent. This order shall be made absolute upon a suitable application being made.

I will make no order as to costs.

**DATED and DELIVERED at Mombasa this 12<sup>th</sup> day of March, 2010.**

**J.B. OJWANG**

**JUDGE**

**Coram: Ojwang, J**

**Court Clerk: Ibrahim**

**For the Petitioner: Bosire**

**For the Respondent absent and unrepresented.**