



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**

**AT ELDORET**

**Divorce Cause 5 of 2009**

**C.K.K..... PETITIONER**

**- V E R S U S -**

**G.C. K..... RESPONDENT**

**JUDGMENT**

The Petitioner for divorce by Judicial decree herein is the husband. The wife has in addition to the Answer filed a cross-petition. There are undisputed facts as follows;-

Husband and wife solemnized their marriage on the 23<sup>rd</sup> day of May 1993 at the District Commissioner's office Bomet. Thereafter they lived together in various places for a period not exceeding ten months. There is one issue of the union namely I.K.K. Husband and Wife have lived apart for a period in excess of fifteen (15) years. The Petitioner pays the fees for the issue of the marriage. They both want their marriage dissolved by their separate petitions.

The Petitioner wants the marriage dissolved on account of the wife's cruelty and desertion. He gave evidence that problems began six months after the marriage and they lived together on and off thereafter for another four months. He gave the particulars of his wife's cruelty as verbal insults to him, that his job of a teacher was a lowly profession without meaningful money and the wife never accepted the fact that he was so poor that he could not even afford a car or take loans to economically advance himself in life like her brother had done. The wife severally threatened to poison their food in an attempt to wipe out the family and the husband could no longer eat at home out of fear of death. His esteem was dangerously eroded by this behaviour. He attempted through his wife's aunt to reconcile with his wife and two meetings with relatives from both his family and that of his wife and friends in an attempt at reconciliation failed flat as the wife would become worse in her abuse to him after each meeting accusing him of telling public her bad side. She chased away his relatives from the matrimonial home saying they were poor and this hurt his feelings, ego and

esteem. Her family members even attempted getting him a better job due to the wife's pestering him to change his job but he loved his job of teaching and he would not change it. His career was looked down upon by the wife and again this ruined his sense of worth. On desertion he gave evidence that the respondent wife did on 21/5/1995 finally desert the matrimonial home never to return after she had messed him up at his work place at K Boys' High School where she beat up a female teacher named N.M accusing her of having an affair with the husband. The husband was as a consequence transferred to W. High School.

He gave further evidence that nothing was left of the marriage and he prayed that it be dissolved and he would continue to maintain the child of the marriage by paying school fees and his other needs whenever called upon to do so. He abandoned his prayer for custody. His Advocate reiterated all the above in his submissions and quoting various authorities prayed that the marriage be dissolved.

The respondent did not attend court at the hearing of the petition for divorce and no evidence was therefore offered in support of her cross-petition.

I have addressed myself to the pleadings and the evidence herein and to the relevant law and I have come to the following finding. For the petition to succeed I need to be sure that a matrimonial offence has been committed. That will be proved by a preponderance of probability and I am satisfied that the petitioner by his evidence has discharged his burden and has proved cruelty and desertion on the part of the Respondent. On that account I would pronounce an order for divorce. The Respondent's answer does not consist of mere denials and as such it needed confirmation under oath. The Respondent opted to absent herself from the hearing and as such offered nothing to support her answer and cross-petition. I accordingly dismiss both for not being proved. I observe that if ever there was a short and troubled marriage this was it. It was also crowded by the relatives of the wife and N.M on the part of the husband.

In the end I order that the marriage between the petitioner and the respondent shall be dissolved for cruelty and desertion by the Respondent. A decree nisi shall issue forthwith which shall be made absolute after three months. The Respondent shall retain the custody of the issue of the marriage. The petitioner shall continue to pay the issue's school fees.

It is so ordered.

**DATED SIGNED AND DELIVERED AT ELDORET THIS 28<sup>TH</sup> DAY OF JULY, 2010.**

**P.M. MWILU.**

**JUDGE.**

In the presence of

**Absent** – Petitioner

**Cheruiyot** – Advocate for petitioner

**Absent-** Respondent

**Andrew Omwenga** – Court Clerk

**P.M. MWILU.**

**JUDGE.**