



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

Divorce Cause 47 of 2009

**J.M.G.....PETITIONER
VERSUS
D.O.N.....DEFENDANT**

J U D G M E N T

The Petitioner on 14th August, 2009 lodged this Petition seeking the dissolution of her marriage with Respondent.

The Petitioner and the Respondent were married at the Attorney General's Chamber, Nairobi on 12th April 2006. At the time of marriage the Petitioner was a Hair Dresser while the Respondent was a Military Officer based at K[...] Barracks.

The marriage was blessed with one child a girl, born on 6th August 2005. The couple has resided in Kenya.

The Petitioner has set out the grounds for the seeking divorce to be that of cruelty. She has set out particulars of the cruelty. These are:-

- (a) *That since the celebration of the marriage the Respondent has never expressed any love towards the Petitioner as a wife and the Respondent has always been cold and extremely unresponsive, unappreciative and hostile towards the Petitioner.*
- (b) *That throughout the marriage the Respondent has treated the Petitioner with cruelty by involving in adulterous relationships with various unknown women which acts constitute adultery and as a result the Petitioner has been greatly mentally affected.*
- (c) *The Respondent has refused to share the bed with the Petitioner and has always rebuffed any attempts on the part of the Petitioner to share the bed or the bedroom.*
- (d) *That immediately after the birth of the child the Respondent refused to play any role as a father and exhibited open hostility towards the said child and has further failed to support her fully with basic needs i.e. food, clothing and school fees and has only been giving a meager amount which cannot sustain them. The Respondent has been guilty of willful neglect of the Petitioner and the child.*
- (e) *That both the Petitioner and the Respondent moved from Nairobi to M[...]Army Barracks in August 2006.*
- (f) *The Respondent has opted to using abusive and offensive language verbally in the presence of the child and neighbours and has on various occasions physically assaulted the Petitioner.*
- (g) *That the Respondent chased away the Petitioner from her matrimonial home in December 2007.*
- (h) *That the Respondent's action of chasing the Petitioner from the matrimonial home has not only adversely and emotionally affected the child but also the couple's relationship as husband and wife.*
- (i) *The Respondent has consistently denied the Petitioner her conjugal rights.*
- (j) *That ever since the Respondent chased away the Petitioner from the matrimonial home, the Respondent has never made any efforts to visit or see the child at Kaloleni where the Petitioner is currently residing.*

The Respondent was served with the Petition and Notice to appear but he did not do so. The Petition was fixed for hearing after directions. It was unopposed.

At the hearing the Petitioner testified on oath. She reiterated the allegations set out in the Petition. She said that their parents attempted to intervene and give them counseling but this did not succeed. That there are no chances of reconciliation.

I have considered the petition and the evidence given on oath. The Respondent has elected not to defend the petition. This conduct amounts to admission of the allegations. Of more importance, is that the Petitioner gave her testimony on oath. She was consistent and the court believed her to be honest and credible as a witness.

On a balance of probability I do find that the Respondent chased away the Petitioner, his wife from the matrimonial home in December 2007. This act amounted constructive desertion. The Respondent has abandoned his wife and child which conduct was willful and amounts to cruelty.

I do find that the marriage between the Petitioner and the Respondent has broken down irretrievably.

I do hereby order dissolution of the marriage between the Petitioner and the Respondent. The Respondent shall pay the costs of the Petition to the Petitioner.

Dated and delivered at Mombasa this 1st day of July 2010.

M. K. IBRAHIM

J U D G E

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Coram

Ibrahim J

Court clerk – Kazungu

Mrs. Gona – Petitioner in person

Judgment read in her presence.

Ibrahim, J

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