



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MOMBASA**

**Divorce Cause 43 of 2008**

**PW..... PETITIONER**

**-VERSUS-**

**SB..... RESPONDENT**

**JUDGMENT**

This is a Divorce Petition filed by PWK on 12<sup>th</sup> August 2008. Both the petition as well as notice to appear were duly served on the Respondent vide Affidavit of Service dated 8<sup>th</sup> September 2008. The Respondent acknowledged receipt of service by signing the documents. Despite this the defendant neither entered appearance nor filed any response to the petition. The petition came up for hearing in this court on 13<sup>th</sup> May 2009. Once again the Respondent did not bother to attend court to defend or oppose the petition.

In her evidence the petitioner told the court that she and the defendant one **BS** an Israeli National solemnized their marriage on 21<sup>st</sup> January 2005 in Addis Ababa Ethiopia. She produces in court her marriage certificate – PExh. 1 as proof of their marriage. The couple then returned to Kenya where they were to set up their matrimonial home but whilst the petitioner came to live in Mombasa with her daughter from an earlier union the Respondent went to live in Nairobi with two of his male friends. The petitioner and the Respondent did not have any children together. It was planned that the Petitioner move to live with the Respondent in Nairobi but she tells the court that she was unable to do so because the Respondent continued to live with his two male friends. On his part the Respondent could not move to Mombasa as he was evading one **J** who was demanding for his child support. Therefore as a result of this the couple never did establish a matrimonial home and they never actually lived together. The Petitioner tells the court that being dissatisfied with the state of affairs she threatened to file for divorce. The Respondent began to send threatening SMS messages and he began to accuse her of adultery which the Petitioner totally denies. As a result of all this the Petitioner became stressed and depressed and was unable to offer loving and effective parenting to her daughter. The petitioner now tells the court that the marriage can not work and asks that it be dissolved.

The couple celebrated their union in Addis Ababa, Ethiopia on 21<sup>st</sup> January 2005. the court notes that the Marriage Certificate produced as an exhibit – PExh. 1 also bears a date 3/5/97 in the Amharic translation. The Petitioner explains to the court that this is the date using the orthodox Ethiopian calendar whilst 21/5/005 is the date using the Gregorian calendar commonly used the world over. This court will take the correct date of marriage to be 21<sup>st</sup> January 2005. The Petition therefore falls within the 3 year limit provided by S.6 of the Matrimonial Causes Act. Cap. 152 Laws of Kenya.

The Petitioner has alleged cruelty on the part of the Respondent in that he made it impossible for them to establish a matrimonial home where they could live together as man and wife. The Petitioner lived in Mombasa where the Respondent was reluctant to come due to personal issues. The Petitioner was willing to live with or at least visit the respondent in Nairobi but he insisted on sharing accommodation with two male friends. The Petitioner had daughter from a previous union and was uncomfortable exposing her child to the two men whom she did not know. In courts view this was a reasonable fear in respect of a young girl-child. The Petitioner further claims that the Respondent constantly harasses her by SMS messages and that as a result she has suffered, stress, trauma and depression making her an ineffective parent to her child. The Petitioners evidence remains unchallenged as the Respondent declined to put in papers or appear to testify to controvert what she has told the court.

As a man and as the husband the respondent ought to have taken the necessary steps to establish a matrimonial home where he and

his wife could live as a family. Whilst it is common for even newly married couples in Africa to accommodate other people in their home like relative and in-laws, it is entirely another matter for a husband to insist on living with friends to the exclusion of his family. From his action it would appear that the Respondent did not desire to live with his wife and if so then what was the point of the marriage? This is a state of affairs which in the courts view would cause distress to any young wife who would be anxious to live with and set up a home with her husband. By his actions the Respondent made this an impossible dream. In courts view this did amount to cruelty on the part of the Respondent against the Petitioner which led to psychological trauma of stress and depression on the petitioner's part. The court is satisfied that the Petitioner has established one on the grounds of divorce i.e. cruelty. It appears the marriage has broken down as the respondent made no attempt to try to defend the petition an indication that he too has no further interest in the union.

The court grants this petition and orders the marriage dissolved. Decree nisi to issue.

**Dated and delivered at**

**Mombasa this 28<sup>th</sup> day of May 2009**

**M.ODERO**

**JUDGE**

Read in open court

Mr. Njoroge holding brief for Mrs. Machuka for Petitioner