



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

**Divorce Cause 5 of 2006**

**RAG.....PETITIONER**

**VERSUS**

**GRNG.....RESPONDENT**

**JUDGMENT**

The Petitioner herein one RAG filed this divorce cause on 16/10/2006. She is seeking the dissolution of her marriage to G RNG her husband of about 38 years. She relies on the grounds of cruelty and adultery. She has particularized the incidents of cruelty under paragraph 5 of her petition. She also claims that the Respondent has deserted her since 24/3/2004 and lastly that he has committed adultery with one AN with whom he has fathered 3 children. It will be noted that the Respondent admitted his relationship to the said AN with who he referred to as his “**unlawful wife.**” According to the petitioner their marriage has irretrievably broken down and all attempts to reconcile have been unsuccessful. She therefore asks the court to dissolve the same. The distribution of the marital property will be dealt with later.

The Respondent filed an answer to the petition and also cross petitioned for a divorce vide his answer dated 24/11/2006. He also relies on the grounds of adultery – particulars of which he has particularized in paragraph 9 of his cross petition. He also claims that the petitioner has “**actively committed adultery**” but he did not name the persons she has purportedly committed adultery with. He also accuses her of desertion and concedes that their marriage has irretrievably broken down.

Both parties therefore have a common ground to the effect that their marriage has irretrievably broken down and that the same should therefore be dissolved. In cases such as this, my view and practice is that it is not necessary to analyse the gory details about who did what to whom. Indeed my very strong view is that where both parties concede that divorce is the only way out, then there is no need of proceeding to prove the grounds of divorce as required in our laws. The time has come when our laws pertaining to marriage should be amended to allow for divorces by consent so that where parties agree that they do not want to continue in their marriage for reasons that it has irretrievably broken down, then it is not necessary to go through the motions of calling evidence to prove the case. This should also apply in instances where a party files for divorce and the other party through duly served refuses to respond. In this case therefore, I see no need to analyse the evidence adduced by the parties or the need to apportion blame. The 2 parties have lived apart for several years. The Respondent already has another family and each of them should therefore be allowed to pursue their life paths away from each other. There are no young children here and so there are no issues of custody that arise out of this divorce. The issues of distribution of the marital property will come later. The fate of their marriage is already sealed. I therefore find and hold that the marriage between the petitioner and the Respondent herein has irretrievably broken down and neither party wants it salvaged. Accordingly, I will allow the petition and cross-petition and order:-

1. That the marriage between the petitioner and the Respondent be and is hereby dissolved.
2. That each party will bear its own costs.
3. That a Decree nisi to issue
4. That any party be at liberty to apply for the same to be made absolute after 6 months from this date.

**W. KARANJA**

**JUDGE**

Delivered, signed and dated at Embu this 29th day of June 2009

**In presence of:-Mr. Kahiga and Mr. Githinji for Mr. Chomba.**

**W. KARANJA**

**JUDGE**