



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI (NAIROBI LAW COURTS)**

**Divorce Cause 146 of 2006**

**B.M.G.....PETITIONER**

**VERSUS**

**P.N.K.....RESPONDENT**

**J U D G M E N T**

On 12.01.06 the petitioner filed petition of the same date praying for the following orders:-

- a) THAT his marriage (to the respondent) be dissolved.
- b) THAT a Decree *Nisi* and thereafter a Decree Absolute be granted.
- c) THAT a Separation Deed between the Petitioner and Respondent be made an Order of this Court.
- d) THAT each party to bear its own cost.

The petitioner appeared in person at the hearing of the petition herein while there was no appearance for the respondent.

There is in the court file an affidavit of service by Peter Gakui Mugo, process server sworn on 19.02.07 that on 03.01.07 he served the petition and notice to appear upon the respondent at her place of work at [PARTICULARS WITHHELD] and that the respondent duly acknowledged service. The petitioner, who is the only person who testified in this cause, told the court that the respondent never filed any answer to the petition. This is confirmed by the court record. The matter, therefore, proceeded as an undefended cause.

Salient facts pertaining to the petition may be summarized as under.

The petitioner and respondent are husband and wife, respectively, having got married to each other on 20.05.2000 in Kiambu District under the African Christian Marriage and Divorce Act, Cap. 151. There is one child of the marriage, N.W.M, a girl, born on 29.11.2000. The petitioner accused the respondent of the matrimonial offences of desertion and cruelty.

It is the petitioner's case that on 09.03.02 the respondent deserted him without cause or his consent by withdrawing from cohabiting with him at the matrimonial home in Nairobi and has never resumed cohabitation with him since.

The petitioner has also accused the respondent of cruelty by subjecting him to abusive language and

rudeness in response to any form of friendly conversation. The petitioner also accuses the respondent of deliberate destruction of his properties, such as guitars, doors, flowers and flower pots, glasses and ceramic utensils in unfounded anger. It is also the petitioner's case that the respondent is guilty of showing lack of respect to his parents and relatives by uttering insults to him in the presence of his said parents and relatives.

The petitioner told the court in his oral testimony that at the time of his marriage to the respondent he was employed as Manager of a Mobil Petrol Station in Nairobi. The respondent was employed as teacher before marriage. She stopped teaching after the marriage. Then the petitioner lost his job, became financially unstable and was offered a house in Nairobi by his relative, D.K.M. The respondent went back to teaching after petitioner lost his job. The petitioner told the court that during the period of his financial instability, the respondent changed her attitude towards the marriage. The petitioner recalled an incident in January, 2002 when the respondent found him plus Mr & Mrs D.K.M who had given him a house after he lost his job. Respondent provoked the petitioner by telling him that if he was man enough, he should beat her. She was violent and proceeded to call him stupid and a dog.

The petitioner told the court that sometime after losing his job, he started a small business in 2003 and uses part of the business income to pay fees and medical expenses for his daughter with the respondent although the daughter is in respondent's custody by mutual agreement between the petitioner and respondent. Petitioner said the respondent usually calls him when the child is sick and he would arrange for the child's treatment.

After narrating the foregoing, the petitioner reiterated his wish to have his marriage to the respondent dissolved.

I have given due consideration to the petition and the evidence in support thereof.

The accusations of desertion and cruelty levelled by the petitioner against the defendant are serious. The respondent was served with the petition containing the accusation, she duly acknowledged service but decided not to file any answer to them. Her silence is most telling. I accept the petitioner's evidence in support of the accusations and find that the respondent had no answer to the accusations. I find both matrimonial offences of desertion and cruelty duly proved against the respondent. Each offence entitles the petitioner to have his marriage to the respondent dissolved. Accordingly, I hereby pronounce a decree of divorce and order that the marriage between the petitioner and respondent be and is hereby dissolved. Decree *nisi* shall issue forthwith, the same to be made absolute after expiry of 30 days upon application therefor.

At prayer (c) the petitioner asked that a Separation Deed between him and the respondent be made an order of the court. No Separation Deed was presented to the court. I ignore that prayer.

Each party to bear his or her costs.

Orders accordingly.

**Delivered at Nairobi this 25<sup>th</sup> day of February, 2008.**

**B.P. KUBO**

**J U D G E**