



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

**FAMILY DIVISION**

**DIVORCE CAUSE NUMBER 177 OF 2003**

**E.N.N. .... PETITIONER**

**VERSUS**

**L.J.N. .... RESPONDENT**

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

The Petitioner and Respondent entered into a marriage on 6<sup>th</sup> December 1975 at the Registrar-General's offices. They soon thereafter cohabited in Nairobi as husband and wife before they established a matrimonial home in Nairobi.

The Petition is based on the ground of cruelty on the part of the Respondent to the Petitioner and their son of the marriage. The Respondent filed a Cross-Petition also based on the ground of cruelty on the part of the Petitioner as against the Respondent. He also alleged desertion on the part of the Respondent but did not appear to base his case on it.

It is observed that although the Respondent gave his evidence in Chief, he was not subjected to cross-examination because he did not turn-up in court on 3<sup>rd</sup> March, 2008 when he was due to be Cross-examined. As a result the court had to proceed to close his case notwithstanding his absence in view of the fact that this proceedings were filed as far back as December, 2003 and any further adjournment did not seem proper to the court.

The summary of the Petitioner's evidence is that the Respondent was cruel to him, particularly after retiring from his employment as Clerk to the Kenya National Assembly. She saw cruelty in his heavy drinking which made him quarrelsome and unreasonable. She alleged in her testimony that the heavy drinking made him lose his mental balance to the extent that he required serious medical or psychiatric treatment. That he spent most of his retirement benefits in drinking to the extent that he lacked funds to maintain her, the matrimonial home and the child of their marriage in relation to education and other relevant matters. She also saw his heavy drinking as responsible for his lack of love for her, his arrogant behaviour to her and their child, his irresponsibility in matters that mattered in life, and even his violent behaviour to her when he threatened to physically assault her. The Petitioner concluded that the Respondent chased her from their matrimonial home during one of his drunken bad moods` when he threatened her with a sword. She even had pleaded that the Respondent mortgaged their matrimonial home to raise funds to drink.

In his cross-petition the Respondent also alleged cruelty against the Petitioner. He alleged dishonesty on her party before and during the marriage. He alleged that Respondent had not disclosed to him that

she had been married and divorced before he married her. He called the Petitioner arrogant and questioned her faithfulness during the marriage, although he was short of accusing her of adultery. He accused her of failing to financially support him during the marriage as she failed to disclose her income and properties. He called her highhanded and disrespectful to him as a husband. That she could arrange for trips inside and outside Kenya without consulting him priorly or in good time. He accused her of failing to show him love and trust and failing to support him in his attempt to support the home and the children. But what appears to have shattered the Respondent most is her secret arrangement, to commit him to a mental care and treatment hospital.

I have carefully considered all the evidence on the record from both sides while minding the fact that Respondent's evidence was not tested in cross-examination. I observed that Petitioner's and Respondent's testimonies were mere allegations not supported by much tangible evidence.

There is no doubt however, that the Respondent's drinking was heavy. However, there was no evidence that it stopped him minding his responsibilities. He paid for his mortgage on the matrimonial house. He paid school fees for their son of the marriage and paid for his college fees when he left for the United States of America, although he did it only the first occasion and left the rest for the Petitioner who was still employed and still earning. If she once gave him Kshs.250,000/- as she indeed did to salvage the house, it was because he was not receiving any adequate income as he had by then retired.

I have come to conclusion that neither party proved cruelty in their testimony on record although they had both pleaded it. Nevertheless there are many instances of misunderstanding and misjudgments in respect to the opposite spouse. Both spouses happened to be having good employment and wielded much authority in society. Each spouse expected love and respect from the other but gave little or none in return. Petitioner was highly educated and proud of her achievement while the Respondent treated such achievement as a cause for his misfortunes in so far they made Petitioner look down upon him.

In summary, then, there were many misunderstandings in this marriage caused by each spouse to the other. But in the court's view, the misunderstandings and results therefrom did not amount to cruelty either way. At least no evidence was brought on record to prove such alleged cruelty either way apart from mere allegations.

But having said that, there is no doubt also that such misunderstandings and effects arising therefrom, led to great mistrust being created between the two spouses. Walls sprung up. Communication ceased. It is likely this may have contributed to Respondent's unusual drinking. In the end the sufferer was the marriage whose meaning lessened daily until neither spouse could not stand the other. Petitioner had to walk out. Whether she was directly told to leave or could not stand it and had to walk away makes little difference in this case.

In court each spouse asserted that the marriage had irretrievably broken down. I saw it so and came to the same conclusion. The two have lived apart for a long time. They said they are better off that way and they seek a relevant legal sanction. In my view they should be given such legal sanction by this court. To keep them together is a futile exercise, one which serves no individual or public function. It will serve public policy therefore to dissolve this marriage. The court does so in the following orders: -

## ORDERS

1. The marriage entered between E.N.N and L.J.N on 5<sup>th</sup> December 1975 is hereby ordered dissolved.
2. A decree nisi shall forthwith issue for six months and either party is granted liberty to apply to make the decree nisi absolute.
3. Each party shall bear own costs of this suit.

Dated and delivered at Nairobi this 5<sup>th</sup> day of June, 2008.

.....

D A ONYANCHA

**JUDGE**