



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI (NAIROBI LAW COURTS)**  
**DIVORCE CAUSE 128 OF 2004**  
**F.A.M.....PETITIONER**  
**VERSUS**  
**H.S.S.....RESPONDENT**  
**JUDGMENT**

The Petitioner wife filed this petition for dissolution of marriage with the Respondent solemnized on 22<sup>nd</sup> September, 2000.

The Petitioner is following Islam religion and the Respondent is following Sikhism a faction of Hindu religion.

The Respondent filed Answer to the petition. However, at the time of hearing of the petition, although present and represented by his counsel, opted not to proffer any evidence but he has denied the averments of cruelty alleged in the petition in his answer, wherein he had also expressed hope for reconciliation. The Respondent has admitted the marriage and birth of a female child S. S. born in 2002.

The Petitioner testified that after their marriage, they started cohabitation from April, 2001 because of the opposition on their marriage by the Respondent's, mother and he had to move out of his parents' home.

She gave the details of the premises in Nairobi and stated that they stayed together therein as wife and husband upto September, 2002. Since then they have lived separately. The burden to run the home and pay all the bills of the household expenditure fell on her shoulders since their cohabitation started. The Respondent was earning decent income from his business, but he refused to contribute towards household expenses. I may note here that in cross-examination, she conceded that the Respondent has paid house rent since September, 2001.

She told the court further, that she was not allowed to call her parents or relatives at her home and was expected to cut all the ties with them, that she was not allowed to observe any Muslim religious rites, and even to keep Koran in the house, that the Respondent would refuse to communicate with her for days, and when she would ask for reasons, he would respond that she should figure out those reasons, that when she conceived the child of marriage, he first refused that he was the father and then asked her to terminate the pregnancy as his family would never accept their child of mixed religions.

The Respondent finally threw her belongings out of the house when she was seven months pregnant and since that day they have lived separately.

According to her their marriage is irretrievably broken down and that she has not condoned the acts of cruelty from the Respondent. She denied that she has colluded with the Respondent in presenting or prosecuting this petition.

In cross-examination some questions as regards the order of custody for the issue of marriage and the order of access, were raised. It was also placed on record that since the petitioner has moved to Uganda, the Respondent had not seen the child. The Respondent did not adduce any evidence.

This is the evidence before the court.

It became evident that the rift in the marriage was mainly caused due to differences in the religions of the parties. The acts alleged to have been done by the Respondent against the Petitioner has been consistent and were of the nature that could and had in fact caused mental anguish and stress on the Petitioner. The law recognizes mental cruelty which has affected the limbs and mind of a spouse and this case does fall within the frame of mental cruelty which a spouse is not expected to suffer in a marriage.

It became evident, by the Respondent not leading any evidence, that the marriage has been irretrievably broken down.

In the premises, I find that the Petitioner has proved her case for dissolution of the marriage as per section 10 of the Matrimonial Cause Act (Cap 152).

I thus order that the marriage in fact solemnized between the parties be dissolved.

I further direct that the Respondent shall return the household items belonging to the Petitioner within 10 days from the date hereof, if not yet returned.

The decree nisi be made absolute within 90 days.

There shall be no order as to costs, as none is asked for.

Dated and signed at Nairobi, this 10<sup>th</sup> July, 2008.

**K.H. RAWAL**

**JUDGE**

**10.7.08**