



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

**Divorce Cause 152 of 2006**

**M N K ..... PETITIONER**

**VERSUS**

**A M M ..... RESPONDENT**

**JUDGMENT**

The spouses in this petition, M N K and A M M, celebrated between each other, a monogamous christian marriage at the Consolata Church Nairobi on 15.2.2003. They obtained a marriage certificate No.85843 of the same date. They thereafter cohabited as husband and wife at Valley Arcade Nairobi and were later blessed with one child, A W, born on 30.11.2005.

Problems in this marriage started a year after marriage. The Petitioner had several pregnancy miscarriages which for some reasons instead of drawing sympathy from her husband and his family, caused hostility and open contempt towards her. Her mother in law derided her and told her on her face that she had brought shame to the family. Her husband instead of standing by her leaned towards his mother and brothers, against his wife. This slowly but steadily pushed him away from the Petitioner who not only felt lonely but unwanted for a fault not of her own making.

Eventually the petitioner was blessed with a baby and because of the sensitivity over and surrounding having a baby in the family, she was forced to resign from her job at Stanbic Bank in order to take care of the baby. The respondent at the same time was transferred to Mombasa in January, 2006 and the petitioner found it more convenient to live with her own parents as she waited to join her husband in Mombasa.

In the meantime and as time went on, the intended journey to join her husband in Mombasa was from time to time postponed by the respondent on flimsy reasons. He slowed down in sending maintenance funds, until he finally stopped sending. He could visit Nairobi where the petitioner still stayed with her parents but would deliberately fail to see her and the baby. She however finally joined the respondent in Mombasa in April, 2006.

At this time it had become transparent to the petitioner that the respondent was interested in another woman. At Mombasa he could fail to turn up at home on several nights. Finally it became apparent that he was having an adulterous affair with another woman called P K. When the petitioner travelled to Nairobi after staying at Mombasa for two rough weeks the respondent refused to send them tickets to return to Mombasa. By this time, the respondent's conduct had not only amounted to grave cruelty but adulterous. He refused sending them maintenance funds. He stopped visiting the baby. He denied the petitioner her conjugal rights. The petitioner now knew that the marriage had become an empty shell.

Finally, the respondent became bold enough to introduce P K as his girlfriend and future wife, which hurt the petitioner seriously and provoked her to file this petition for the dissolution of the marriage basing the petition upon the grounds of cruelty.

The respondent filed an Answer to this petition as well as a Cross-petition. Since the respondent refused to testify to controvert the petitioner's evidence and since in any case the respondent's advocate who was in court took the position that they would not oppose the petition, I came to the conclusion that petitioner's petition and evidence remained unopposed.

I accordingly accept the petitioners' versions of facts and evidence. In those facts I find that the respondent's conduct during the marriage amounted to grave cruelty. I am surprised that in clear circumstances of this case the petitioner did not in addition choose to rely on the ground of adultery. However, be that what it may I am satisfied that the petitioner has proved her case and is entitled to the dissolution of this marriage.

Furthermore there is no doubt that this marriage is already irretrievably broken down to the extent it cannot be salvaged. The spouses stopped living together three or so years ago. The respondent took up P as his new wife and they have a child. Clearly the marriage is practically over. It should be dissolved. As the respondent did not seek for the custody of the child or the right of access, the child will go to the petitioner's custody unconditionally.

**ORDERS:-**

- 1. The marriage contracted between M N K and A M M on 15.2.2003 is hereby declared dissolved with a decree nisi to issue forthwith for 3 months, with liberty to either party to apply to make it absolute**
- 2. The custody of the child, A W M is to the petitioner.**
- 3. No order is made as to costs.**

Dated and delivered at Nairobi this 25<sup>th</sup> day of September, 2008.

**D.A. ONYANCHA**

**JUDGE**