



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

Divorce Cause 197 of 2001

M N M.....PETITIONER

VERSUS

P N G.....RESPONDENT

JUDGMENT

This divorce petition was certified as a defended cause, but on the date of hearing, the Respondent/husband or his counsel did not appear although date was taken by both counsel and hence the hearing proceeded ex-parte.

The parties married under customary rites in 1988 and formalized their marriage under the Marriage Act (Cap 150) on 15th September 1995. They have one daughter, S D W, born on 20th January 1989.

The petitioner/wife has filed this petition on the ground of cruelty as well as adultery, on the part of the Respondent.

According to her testimony, the Respondent started having adulterous relation after the birth of their daughter, when he stated that the petitioner should allow him to find another girl as she was unable to give him sex due to the birth of their daughter. In the beginning she thought it was a joke but he started spending nights and weekends outside and even when he came home it was always late. On one Sunday he came home after spending night out on Saturday, the previous night, and showed her a birthday card from one Schola and, when she asked what was that about, he told her that she was the girl whom he was seeing. This happened in 1989.

In 1995, as per her testimony, he had an affair with one B who was the wife of their friend S. The Respondent always denied, but it was Steve who followed them to a lodging home and caught them red-handed.

In 1996, he had an affair with one W, who was working at a bar next to the shop she was managing. She could easily see their acts of affair which the Respondent did not even try to hide. The Respondent also did not deny that he had impregnated one C when she found them together in a restaurant.

When she could not bear these actions she left the matrimonial home with the daughter on 28th February 1992.

This was the evidence in respect of the petitioner's allegations of adultery. It is true that the evidence of the petitioner was not controverted, before the court, but he has denied those averments in his answer to her petition. The petitioner has not despite citing those ladies, served any of them specially C who was as

per her evidence, impregnated by the Respondent.

I shall be hesitant hence to accept the averments of adultery as satisfactorily proved, as per the standard required in a divorce cause. She left the matrimonial home with the daughter on 28th February 1992. I do tend to accept those evidence, however, as bordering to cruelty specially when a husband openly shows a card written with endearing words and accepting his extra – marital affairs to the wife. These incidents must have caused mental anguish to her. Over and these actions, the petitioner further testified that the Respondent was a compulsive drunkard and abused her physically and verbally. The Respondent hails from a rich family with access to a lot of money. Despite that fact he did not contribute anything towards the upkeep of house or education of their daughter. It was she who looked after the house and the daughter. Most of the time, he forced her to have sex with her after coming home drunk. She was seriously affected by all his actions and her physical and mental health suffered.

She denied the allegations of cruelty made against her by the Respondent in his cross – petition. She stressed that she could not have been cruel to him as she was constantly in mental and physical anguish.

She emphasised that their marriage has been irretrievably broken down and that she has not condoned acts of cruelty and adultery averred by her of the Respondent and has not been accessory to those acts. She also denied having colluded with the Respondent in presenting or prosecuting the petition.

With these facts adduced in her evidence the petitioner prays for dissolution of her marriage with the Respondent. Her uncontroverted testimony, I find, was credible and do accept its veracity.

From her evidence, it has clearly emerged that the Respondent has treated the petition with utter and unpardonable cruelty. The averments of adultery could not be accepted by me only due to strict legal constraint. But the acts of cruelty testified by her are extreme and this court cannot but express its sympathy with the petitioner who has suffered intolerable mental and physical anguish. I am satisfied that the Respondent was cruel to the petitioner and that she has not condoned or been accessory to those acts and has also not presented or prosecuted this petition in collusion with the Respondent. The marriage, I do agree, has been broken irretrievably.

In the premises aforesaid, I do order that the marriage solemnized between the parties herein, be dissolved. Decree nisi be made absolute within 45 days from the date hereof.

The Respondent shall pay costs of the petition.

Dated and signed at Nairobi this 25th day of September, 2008

K.H. RAWAL

JUDGE

25.9.08