



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

**Divorce Cause 17 of 2008**

**A. J. M. O. B ..... PETITIONER**

**-VERSUS-**

**W. B ..... RESPONDENT**

**JUDGMENT**

A.J.M.O.B and W.B entered into a statutory marriage on 11<sup>th</sup> May, 1991 in the Province of Ontario, in Canada. They were given a marriage certificate of the same date. They cohabited as wife and husband in Canada, Tanzania and Kenya. They begot two children M. B. and R. B. on 26.11.1999 and 17.9.2002, respectively.

The spouses stopped cohabitation and A.J.M.O.B Petitioned for the dissolution of the said marriage under a petition dated 18.2.2008 and filed in court on 20.2.2008.

The Respondent W.B filed an Answer and a Cross-petition to the petition on 23.4.2008.

The ground upon which the petitioner sought the dissolution of the marriage was cruelty. When the case came for hearing on 16.10.2008, the respondent who turned up in court, chose not to defend the petition. He also chose not to prove the contents of his Answer and Cross-Petitioner that he had filed.

The petitioner in her testimony under oath, stated that the respondent had throughout the existence of their marriage treated her and the children of the marriage, with cruelty. She said that in January, 2007 the Respondent left her and the children without provisions for maintenance. He had moved out of the matrimonial home and stayed away for 10 months without caring of what they

should eat or use. In September, 2007, she added he paid **Kshs.40,000/=** for school fees and school expenses but failed to pay the balance of **Kshs.60,000/=** to the same school. Also in April, 2008, the respondent took a loan without informing the petitioner contrary to a matrimonial agreement they had made. The petitioner further is said to have exploited the couple's joint bank account by taking all the funds in it without disclosing the same to the petitioner. The result was that when she wrote a cheque to withdraw cash her cheque was dishonored. Finally the petitioner also testified that during the marriage the respondent physically assaulted the petitioner.

It was the petitioner's case that all the above incidents committed by the respondent against the petitioner and their children, created a continuous stress on them and amounted to mental and physical cruelty. The petitioner testified that she tried at all the relevant time to reconcile with the respondent and to persuade him to change his cruel conduct on them, but in vain. She also tried to fend for herself and the children but it was too hard and too heavy for her. She lived under the distress caused by his mistreatment of his family.

The respondent who was present in court chose not to controvert the petitioner's evidence. The result then is that this court believed the petitioner's testimony. The court therefore concluded that the petitioner has proved the ground of cruelty against the respondent.

In addition it became clear to the court that the parties no longer loved and respected each other. They have separated for over a year. They clearly have chosen separate ways. The marriage cords are broken and the marriage is already on the rocks. That chances to salvage it has slipped by. The marriage is irretrievably broken with little or no chances of salvaging it. It is the view and conclusion of the court that there is no point in continuing to tie the spouses together anymore. They should be allowed and be freed to chart new courses. That will be done by the following Orders:-

### **ORDERS:-**

**1. The marriage entered into by A.J.M.O.B on 11.5.1991 in Ontario Canada is hereby dissolved. A decree nisi shall issue for**

**three months with liberty to either party to apply to make it absolute.**

**2. The respondent shall bear the costs to be agreed upon or taxed.**

Dated and delivered at Nairobi this 30<sup>th</sup> day of October, 2008.

**D.A. ONYANCHA**

**JUDGE**