



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

**Divorce Cause 45 of 2008**

**PMM ..... PETITIONER**

**VERSUS**

**KNM ..... RESPONDENT**

**JUDGEMENT**

This petition had been duly certified as an undefended cause.

The Petitioner in his candid testimony testified that the marriage was solemnized between him and the Respondent on 7<sup>th</sup> October, 1998. The Marriage Certificate (certified copy) is annexed to the petition. Both the parties are lawyers by profession.

They have twin daughters born on 23<sup>rd</sup> November, 1998 named [particulars of their names withheld]. They cohabited at a premises situate along Garden Estate, Nairobi.

The Petitioner is seeking dissolution of the marriage on the grounds of Adultery and cruelty.

He deponed that in the year 2004, their marriage started facing problems. The Respondent completely changed her behaviour. She used to come home late at night or never. When asked by the Petitioner as to her late coming or totally not coming at home at night, she became rude and abusive. The Respondent totally neglected the Petitioner and their daughters and they were left at the mercy of the house helps. When the situation worsened, the Petitioner called for a meeting of their two families in February 2006. The Respondent confessed about her extra-marital relationships. The Petitioner had testified that after 2004 he received many telephone calls from several ladies asking him to tell the Respondent to leave their husbands alone. During the aforesaid meeting, the Respondent promised to mend her ways.

Unfortunately nothing changed and the couple separated. Due to the age and gender of the twins, they agreed that the Respondent shall have custody of the twins and the Petitioner had bought a house for them to live in. He also pays for their education and other needs. In short, they have agreed as to the issues of custody and maintenance for the children.

The Petitioner stated with all humility that the acts of the Respondent as testified by him caused him severe embarrassment and mental torture and anguish. His life was unbearable due to awkward position he was left in by the Respondent. He confessed that the marriage is only on paper, it is totally broken socially, physically and morally.

All these averments remain uncontroverted and I do find that his testimony was credible and do rely on it.

Over and above the general definition of cruelty as per matrimonial law there cannot be a closed list of which acts can be termed as cruelty. That depends on the circumstances of each case. This Petitioner has to suffer mental anguish by embarrassment and social humiliation from the continuous acts of the Respondent over a long period and thus I do hold that the Respondent has been guilty of cruelty against the Petitioner.

I also hold that the Petitioner has not condoned those acts of cruelty and that he has not presented this

petition in collusion with the Respondent.

Having found as hereinbefore, I order that the marriage between the parties be dissolved, and decree nisi be made absolute within 60 days.

There shall be no order as to costs.

Dated and signed at Nairobi this 23<sup>rd</sup> day of October, 2008.

**K.H. RAWAL**

**JUDGE**

**23.10.08**