

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT NYERI

Divorce Cause 11 of 2005

KENNETH KAMISOI:.....PETITIONER

VERSUS

DORIN T. KAHNGALZI:.....RESPONDENT

JUDGEMENT

The petitioner **KENNETH KAMISOI** started cohabiting with the respondent **DORIN KHANGALZI** in 1997 at his home in Itegero. On 12th December,2001 they solemnized their marriage at Ingaliza PAG Church. They lived there for a while and later the petitioner was posted to Eldoret as a Pastor. The respondent joined him there. However according to the petitioner their marriage was strained as the respondent was cruel to him and eventually deserted from matrimonial home. He testified that she was abusive and quarrelsome. She use to go and return home very late without telling him where she had been and when he inquired she would abuse him. She would abused him before people and she had no respect for him or his parents. Eventually she left their home on 15th August,2004. He looked for her and later found her living with a man in Mosoriot. He went there with church elders but she refused to return home. He told court that they have irreconcilable differences and asked for Divorce.

Respondent also cross-petitioned for divorce. She said their marriage was not blessed with any child and due to this the petitioner and his parents kept on abusing her saying she could not give birth. She they married he paid for petitioner to attend college to train as a pastor. Later he was posted to Eldoret. She joined him but later shoes to go to their home but found that all the household goods beddings and clothes she had bought had been taken by the petitioners brother.

On 15th August,2004 when he escorted petitioner to bus stage to return to Eldoret she went home and found his relatives had locked her house. She therefore went back to her parents home. The petitioner did not go to find out why she left. Later she came to Eldoret and petitioner told her that his parents had gotten him another wife to marry. On 19th October 2004 he chased her away from their home and was left with her clothes.

I have carefully considered all the essence. Both the Petitioner and Respondent have petitioned the court to dissolve their marriage each citing cruelty and desertion. It is clear from their essence that they have irreconcilable difference which I believe arises from the failure to consummate the marriage by getting a child. The petitioner narrated how the respondent use to leave home and come late and how he used to abuse and quarrel him even before other people. Eventually she left the matrimonial home. On her part the respondent told court how the petitioner and his parents would abuse her saying she would not give birth. The parents wanted her chased away and on 15th August 2004 they locked her house forcing her to go back home. None of the parties called any witnesses. Thus it was word of one against the other.

In the case of **MEME -VS- MEME (1976) KLR 13 Chesoni J.** as he then was, stated that it was difficult to define cruelty in matrimonial cases and that :-

“Each case of cruelty has to be decided on its own facts”

He set out two tests which should be satisfied – whether the conduct of the conduct complained of is sufficiently grave and weighty to warrant the description of being cruel, and whether the conduct has caused injury to health or reasonable apprehension of such injury. In the present case there is no complaint of actual body injury or assault. Each only complained that the other was abusive to him/her. The petitioner said the wife was coming home late. The Respondent on the other hand said that the petitioner chased her away. It is clear from the evidence that their marriage has irretrievably broken down. They have been living apart from the year 2004 and none has the desire to resume their relationship. It is clear that each of them has contributed to the breaking of the marriage in one way or another. The respondent was abusive and quarreled the petitioner even before other people. She would go home late at night. That was cruelty and led to mental torture of the petitioner who was a pastor. On the other hand the petitioner seemed to hate the respondent because their marriage had no child. She said that even his parents joined in the fray and they wanted her chased away because she had no child. They locked her house and he chased her away from his home at night. That too was cruelty to the respondent. None told the court who was to blame for lack of a child of the marriage.

From the above therefore I find the petitioner and cross-petition both have merits. The marriage has broken down and there is no hope of resurrecting it. In the circumstances I allow the prayer in the petition and the cross petition and order the marriage between the two dissolved. I consequently issue a decree Nisi.

Each party will however bear his/her own costs.

Dated and delivered at Eldoret this 6th day of March,2007.

KABURU BAUNI

JUDGE

DELIVERED IN THE PRESENCE OF:

C/C - David

for Petitioner

for Respondent.