



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI (NAIROBI LAW COURTS)**  
**Divorce Cause 42A of 2006**

**R G K..... PETITIONER**

**VERSUS**

**S N.....1<sup>ST</sup> RESPONDENT**

**A M N.....2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

RGK petitioned this court to dissolve her marriage to S N, on the grounds of cruelty, whose particulars she gave in para 6 of the petition. She also prayed for costs of the petition.

The respondent filed an answer to the petition and denied the “**charge**” of cruelty and the particulars thereof. He prayed the court to dismiss the petition with costs, stating at para 4, that it was the petitioner who deserted the matrimonial house at Kangemi upon his discovery that she had procured abortion against his advise.

Despite the above answer, the cause was certified as “**undefended**” by the Registrar on 3<sup>rd</sup> August 2006.

Indeed the undefended cause proceeded for hearing on 26<sup>th</sup> April, 2007, when the petitioner testified that she got married to the respondent on 16<sup>th</sup> December 2000 at the Maximum Miracle Centre in Nairobi. A certified copy of the marriage certificate was attached to the petition. It shows that this was a marriage under the Marriage Act, Cap. 150, Laws of Kenya

couple had no children between them. The petitioner recalled that immediately after marriage, she found her husband entertaining another woman in their matrimonial house one afternoon when she returned to the house from work unexpectedly one afternoon. She chased the woman and questioned her husband, who, to her surprise stated beating her!

The petitioner requested her mother in law to come and help them sort out this problem. She came but her husband chased her away. The petitioner proceeded further to summon both the best man and best maid at their wedding to help them sort out the problem. They came and talked to the respondent who promised to change, but did not as he continued coming home and at times did not return home at all for a number of days.

The petitioner next called their church to come and talk to her husband. He came and counseled both of them and the respondent once more promised to change, but he did not and he continued to spend several nights away from home.

Finally the petitioner called both her mother and the respondent's mother. They both came. They held lengthy talks, but again the respondent did not change.

The plaintiff started having severe headaches. She consulted a doctor who recommended immediate admission into hospital, where she went into a coma and was transferred to Kenyatta National Hospital. She was pregnant by then, and this had to be terminated in order to control her blood pressure which was very high. The respondent refused to sign forms for consent to terminate the pregnancy, and it was his mother who signed the forms. The petitioner was too ill to sign the forms. The respondent also refused to pay the hospital bills. His mother paid instead. They did not even visit the petitioner in Kenyatta National Hospital where she was admitted for 2 weeks.

Finally she was discharged from the hospital. This was in 2003 and she decided not to go back to live with the respondent whom she found to be very cruel. She went to her sister's house, and he never came to visit her during that time.

Since 2003, the petitioner next saw her husband in 2006. He came to her office to enquire about the court case, but the petitioner told him that she had nothing to do with him.

The petitioner also testified that her husband was irresponsible. He never paid any bills in the house, i.e. house rent, food, clothing etc etc.

The petitioner testified further that currently her husband lives with a woman named Agnes, as such, she cannot resume cohabitation with him, as he is already married. That he is a cruel man who infected her with venereal diseases, i.e. syphilis, many times, as such she would never want to go back to him. She continued in court that she has not condoned or connived at the respondent's acts of cruelty. She also accused him of desertion.

Written submissions were prepared to support the petitioner's oral submissions.

From the oral evidence adduced by the petitioner and the pleadings on record, which evidence was not challenged, I find that the respondent was cruel in that he beat up the petitioner on several occasions, and again infected her with venereal diseases. I find that the petitioner has proved her case on a balance of probabilities and I proceed to dissolve her marriage to the respondent. I also award the petitioner costs of the petition, as against the respondent.

I direct that a decree nisi, do issue today and the same will be made absolute within a period of one month from today.

Dated at Nairobi this 12<sup>th</sup> day of July 2007.

**JOYCE ALUOCH**

**JUDGE**