



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT NAIROBI (NAIROBI LAW COURTS)  
Divorce Cause 25 of 2004**

**ELIZABETH WANJIRU GICHOHI.....PETITIONER**

**VERSUS**

**VICTOR NGURE MATHENGE.....RESPONDENT**

**JUDGMENT**

**ELIZABETH WANJIRU GICHUHI**, petitioned for divorce from her husband **VICTOR NGURE MATHENGE**, on grounds of cruelty and desertion whose details were given in the petition.

The respondent who lives and works in South Africa was nevertheless served with the petition and all relevant documents when he returned to Nairobi to bring the body of his deceased brother back home.

The respondent did not file any answer to the petition and the registrar certified the petition “**undefended**”.

The petitioner and respondent first got married under Kikuyu Customary Law in 1974, and subsequently formalized their marriage under the Marriage Act, at the Registrar General’s office on 28.10.1988. She produced a copy of the Marriage Certificate.

The couple lived and cohabited in several places as shown in para 3 of the petition, and they had 4 children whose names and ages appear in para 3 of the petition. They are all now aged 18 years old, Moses the last born child having turned 18 years old, only in March, 2007.

The petitioner is an employee of Central Bank of Kenya as a Secretary whilst the respondent left for South Africa several years ago.

The petitioner stated that the respondent started drinking heavily in 1976, after the birth of their 1<sup>st</sup> child. That further, he could stay away from home for as long as one month, return and apologise, but go back and do the same thing over and over again.

In 1993, he was transferred to Molo, in the Rift Valley, but left that job after 3 months, returned to Nairobi and continued drinking and now started becoming violent and started beating her. She reported to the police several times, but they told her that these were domestic problems.

The petitioner again recalled the year 1998, when her husband returned home drunk and started fighting their 1<sup>st</sup> born child.

This incident was reported to the police. The respondent was arrested and charged with creating disturbance and appeared in court at Kibera once, and subsequently disappeared and stayed away from

Kenya for about 5 years, but returned last year, 2006 when his brother died and he brought the body back home. He called the petitioner asking for the children, but she did not care to take the children to him because he had basically cut touch with them for 5 years.

The petitioner denied having connived with her husband to bring the petition to court. Again, she has not been accessory to or condoned her husband's acts of cruelty.

The petitioner lamented that the tense relationship between her and her husband affected her daughter negatively as she is very unfriendly towards her and her other children.

At the conclusion of the oral evidence, written submissions were prepared and filed. I have considered them plus the oral evidence adduced by the petitioner, which evidence was not challenged, and I accept it as the truth in this divorce cause.

From that evidence, I am prepared that the respondent was cruel to the petitioner during the subsistence of their marriage, and further that he deserted her and the children and went to South Africa, from where he returned after 5 years, to bring home the body of his deceased brother.

I proceed to dissolve the marriage between the petitioner and respondent, solemnized on 28<sup>th</sup> October 1988, due to the respondent's cruelty and desertion.

I order the respondent to pay the costs occasioned by these proceedings.

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

Dated at Nairobi this 27<sup>th</sup> day of September, 2007.

**JOYCE ALUOCH**

**JUDGE**