



REPUBLIC OF KENYA

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

**Divorce Cause 161 of 2006**

**ESTHER KILONZO.....PETITIONER**

**VERSUS**

**GIDEON WAMBUA MATHENDU.....RESPONDENT**

**J U D G M E N T**

The Petitioner **Esther Kilonzi** prayed for an order to dissolve her marriage to her husband **Gideon Wambua Mathendu**, on grounds of cruelty and constructive desertion, whose particulars were detailed in paragraph 12 of her petition.

According to the Petitioner, this petition is not presented in collusion with the Respondent. Further, she has not condoned or connived at the Respondent's act of desertion. Both rationales, domiciled in this country.

The Respondent was served with a copy of the petition herein, but he did not enter appearance or file a replying affidavit, so the cause was certified as a n undefended.

The Petitioner and Respondent got married on 8<sup>th</sup> April 1995 at Umoja Kingdom Hall in Nairobi. She produced the original marriage certificate as Exhibit 1 in court.

After marriage the two lived and cohabited as husband and wife at Umoja estate in Nairobi. The marriage was blessed with one child, **Quincy Mathendu**, aged 11 years.

The Petitioner and Respondent have lived separate since 2000. She complained that her husband had associations with many other women, and that on top of all that, he once found him in bed with the house girl, at about 6.30 p.m. The door was not locked so she opened it easily. On being questioned, the husband admitted having had sex with the house girl on that day and before that date.

The Petitioner also complained of having beaten by her husband several times. That both parents got involved and tried to resolve their problems. Even the best man and the best-maid at their wedding also got involved in helping them to resolve their difference but things did not work out, as the Respondent continued being unfaithful and also continued to beat her.

The Petitioner left the matrimonial house in 2002, and rented a house within the same estate. She does not want to resume cohabitation with the Respondent because of his cruel character.

She prayed the court to dissolve her marriage and give her custody of the child of the marriage whom her husband does not come about, anyway.

I believe the Petitioner's evidence as narrated in court. This is evidence which was not challenged as the Respondent did not file an answer.

The Petitioner's evidence does indeed show that the Respondent was cruel by beating her and also behaving so irresponsibly in his relationship with other women. This is what has caused the breakdown of the marriage. For this reason, I proceed to grant an order to dissolve the marriage between Esther Kilonzi and Gideon Wambua Mathendu. I order the Respondent to pay the costs incurred by the Petitioner in this cause. Further, I proceed to grant custody of the only child of the marriage namely Quincy Mathendu, to the Petitioner, but with reasonable access to the Respondent.

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

**Dated and delivered at Nairobi this 15<sup>th</sup> day of November, 2007.**

**Joyce Aluoch**

**Judge**