



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

Divorce Cause 181 of 2002

JP.....PETITIONER

VERSUS

SKSP.....RESPONDENT

JUDGMENT

This is a petition for divorce filed by Alphonse Mutinda & Company advocates on behalf petitioner on 16th October 2002. Subsequently, Kibanga & Kibanga advocates came on record for the petitioner.

The ground for divorce in terms of the petition is cruelty Particulars of the said cruelty were given in the petition. The respondent was served and acknowledged service by signing on 18/10/2002, but neither entered appearance, nor filed an answer to the petition. Therefore the petition was certified by the Deputy Registrar as undefended and to proceed to hearing as an undefended cause.

At the hearing of the petition on 27/4/2004 only the petitioner J.P gave evidence. It was her testimony that she got married to the respondent on 19/11/94 at Nairobi – and produced the marriage certificate as exhibit 1. That after marriage both the petitioner and the respondent went to Uganda until 2000. They cohabited in Uganda and got one issue of the marriage M.K, who was son born on 6/1/1999. She produced the birth certificate as exhibit 2.

She testified that the respondent was cruel to he. He used to take alcohol and assault her. He used to misbehave. He had bad temper and used vulgar language on her. At one point she even ended up in hospital. That cruel behaviour continued for four years, and she stopped living with him since 2000. The reason for stopping to live with him was the violent behaviour.

She asked for divorce and custody of the child. She did not want to be paid costs.

This is an undefended case. Only the petitioner testified. Her evidence was not controverted.

I have to determine, first of all, whether there is a marriage capable of being dissolved. It is my finding on the evidence and the marriage certificate produced, that indeed, at the time of filing the petition, there was a marriage between the petitioner and the respondent that was capable of being dissolved.

The evidence of cruelty against the respondent was uncontroverted. The respondent neither filed an answer to the petition, nor did he appear in court at the hearing. I find that the petitioner has established her allegation of cruelty. Cruelty, is a ground for divorce under section 8 of the Matrimonial causes Act

(Cap. 152). As I have found that the respondent committed acts of cruelty against the petitioner, that justifies dissolving the marriage. I also find, on the evidence, that the marriage has broken irretrievably, as the parties are not together since 2000. Therefore I have to dissolve the marriage.

The petitioner has also asked for custody of the child. The child was born in 1999. The child is staying with the petitioner. He is still a young boy of about 7 years old. Again, there is no opposition to the prayer for custody. I am of the view that, orders of custody of the child will be in the best interests of the child.

For the above reasons, the petitioner's case herein succeeds. I allow the petition and order as follows

1. The marriage between the petitioner and the respondent be and is hereby dissolved. A decree nisi for divorce be and is hereby issued to be made absolute after the lapse of six (6) months.
2. The custody of the child of the marriage M.K is given to the petitioner herein.
3. The petitioner will bear the costs of the proceedings.

Dated and delivered at Nairobi this 25th day of May 2006.

George Dulu

Ag. Judge

In the presence of the parties, as date for judgment was given in the presence of counsel for the petitioner.