



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT ELDORET**

Divorce Cause 9 of 2004

R.A.O.....PEITIONER

VERSUS

D.M.O.....RESPONDENT

JUDGEMENT

The Petitioner seeks that her marriage to the Respondent be dissolved. The petition dated 11th June, 2004 was duly served on the Respondent who filed a “**Defence**” on 22nd July, 2004. He denied the allegations of cruelty and prayed that the petition be dismissed with costs.

The Respondent did not appear at the hearing having been duly served with the hearing notice. The Petitioner and the Respondent were married on the 14th July, 1995 at the Registrar of Marriages office at Kisumu. After the marriage, they lived at Kisumu and later in Eldoret. The Petitioner and Respondent did not get any children.

The Petitioner testified on oath that she is a nurse. She said that after the marriage she lived with the Respondent up to 2004 when they separated. She claimed that this was due to his cruelty.

The Petitioner testified that:-

- The Respondent repeatedly used abusive language against her both in private and in the presence of third parties.
- The Respondent is a taxi driver and would not come home. When she asked him about this, he would abuse her.
- The Respondent would habitually spend nights away from home and spent at home only one or two days a week.
- He has threatened her with death.
- In 1995, the Petitioner underwent surgery and upon her discharge, she did not find the Respondent at home. He kept away for two days, when she was supposed to be recuperating she did not have a house help.

- In December 1996, the Petitioner had another surgery and was hospitalized. The Respondent did not go to see her in hospital. After her discharge he came home for one day and disappeared for another three days.
- When the Petitioner asked him about his absence, he threatened her with a cooking stick.
- One morning, the Petitioner returned to the house from work since she had forgotten a key. When she opened the bedroom door she found the Respondent in bed with another woman.
- The Petitioner talked to the woman who said that the Respondent had offered her work as a housemaid. He had told her that he lived with this sister.
- The Respondent continuously abused the Petitioner because she could not give birth saying that she was useless and not worth staying with.
- On one occasion the Respondent picked a wheel spanner and wanted to hit the Petitioner with it. She closed herself in the bedroom. She reported the matter to the police.
- The Respondent returned to the house and threw photographs at the Respondent. One photograph was of a lady whom he called N. He said that she was his new wife.
- The other photograph was of a baby. He said that it was his child. The Petitioner produced the two photographs in court as evidence.
- The Petitioner said that she sought intervention of his family and relatives but in vain.

I have considered the petition herein and the evidence tendered by the Petitioner. The Respondent did not attend court to challenge or oppose the petition. I found that the Petitioner was a credible and truthful witness before the court. The Petitioner has proved to the satisfaction of this court all the charges of cruelty and that of adultery.

As stated by Justice Chesoni in **MEME V. MEME**, (1976) KLR,13 at p.19, cruelty as a matrimonial offence upon which a petition for dissolution of a marriage may be grounded is defined as wilful and unjustifiable conduct of such character as to cause danger to life, limb or health, bodily or mental, or as to give rise to a reasonable apprehension of such a danger.

I hold that the Respondent is guilty of such wilful and unjustifiable conduct and has caused danger to the life, limb and health of the Petitioner. The Respondent has acted with callousness and selfish-ness against the Petitioner. It would appear that the only “**wrong**” she may have committed is that she did not give any child to the Respondent. In my view, this cannot justify cruelty in a matrimonial relationship. It is also no fault of the Petitioner that she could not conceive with the Respondent. This is a matter of life, fate and God’s plan. In any case, a spouse must take the other as he/she found him/her in such matters.

There is also the issue of compatibility such that the Petitioner may well be blessed with children with another man.

In all, the Petitioner did not deserve the cruel treatment meted out to her by the Respondent. The Respondent did not provide any maintenance to the Petitioner or take care of any necessities e.g. rent, electricity, water, food etc. All these were provided by the Petitioner. The Respondent certainly does not deserve the Petitioner and this court is obliged to relieve her from the aforesaid cruelty and bondage.

The Petitioner has also proved to the satisfaction of the court that the Respondent committed adultery. She witnessed this personally in her matrimonial home and bed.

As a result, I have no hesitation in granting the relief sought and I do hereby order the dissolution of the marriage between the Petitioner and the Respondent. I also award costs of the petition to the Petitioner

against the Respondent.

DATED AND DELIVERED AT ELDORET ON THIS 22ND DAY OF JUNE 2006.

M. K. IBRAHIM

JUDGE