



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

**Divorce Cause 12 of 2005**

**F.G.K.....PETITIONER**

**VERSUS**

**J.J.C.....RESPONDENT**

**JUDGEMENT**

The Petitioner lodged this Petition in court on 24<sup>th</sup> October, 2005 seeking the following orders:-

- (i) Dissolution of the marriage to the Respondent and grant of an Order of divorce.
- (ii) Custody of the children of the marriage
- (iii) Costs of the petition.

The Respondent was duly served with the petition on 25<sup>th</sup> October, 2005. The Petitioner subsequently caused the service of the Hearing Notice together with copies of the statement, Notice to Appear and petition on the Respondent on 16<sup>th</sup> December, 2005. The hearing was scheduled for 23<sup>rd</sup> January, 2006. The Respondent acknowledged receipt of the process by signing on the back of the original copy. I am satisfied that she was duly served.

The Respondent did not file any response to the petition neither did she cross – petition. The petition was heard on 23<sup>rd</sup> January, 2006 and 15<sup>th</sup> May, 2006.

The Petition is grounded on alleged cruelty on the part of the Respondent. Upon hearing the petition, the court finds that the Petitioner and the Respondent were married at St. Mathew’s Pro – Cathedral at Eldoret on 14<sup>th</sup> December, 1990. The couple lived in Kapsoya Estate in Eldoret from the date of marriage up to 2000.

The union was blessed with three (3) children:-

1. A.W – Daughter, born on 14<sup>th</sup> August, 1990.
2. M.W, - Daughter, born on 29<sup>th</sup> April, 1993.
3. J. K - Son, born on 19<sup>th</sup> January, 1998.

In the year 2000, the Petitioner and the Respondent moved to live in Lumumba Avenue, Eldoret. The Respondent left the matrimonial home in July 2004 for 6 months. She moved out of the house again from 11<sup>th</sup> August, 2005 and has not gone back to the matrimonial home ever since.

The Petitioner testified that the Respondent has never gone to see the children. Two of the children fell sick and were hospitalized this year but she did not go to see them. The Petitioner told the court that even before the desertion from the matrimonial time, the Respondent was quarrelsome and did not look after the children. She used to go back home at night, at about 9.00 p.m. on many occasions, she would disappear for 3 – 4 months without any communication with the Petitioner. The Petitioner produced a note from the Respondent in which she declared that she would never go back to live with him. She made various allegations against the Petitioner in the said note.

Upon consideration of the petition and the evidence of the Petitioner, I do hereby find, on a balance of probability, that the Respondent has treated the Petitioner with cruelty as particularized in the Petition. The Respondent has not come to defend these proceedings or to cross-petition. This omission demonstrates that she has no interest whatsoever in this marriage. Sadly, this also demonstrates that she does not care for her children enough to ask for their custody.

I am of the view that in the circumstances of this case at this stage that it is in the interest and welfare of the children of the marriage for them to be in the custody of their father.

I do hereby order the dissolution of the marriage between the Petitioner and the Respondent. The Petitioner shall have the custody of the three children of the marriage. The Respondent is at liberty to apply for access and visitation if she has a change of heart about the children. There shall be no order as to costs.

**DATED AND DELIVERED AT ELDORET ON THIS 15<sup>TH</sup> DAY OF JUNE, 2006**

**M. K. IBRAHIM**

**JUDGE**

**15/6/06**

Coram – Ibrahim ‘J’

C/C - Chelanga.

Mr. Fredrick Gitau Kamau in person – Petitioner

No Appearance by/for the Respondent

Judgement delivered and signed.