



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MOMBASA**  
**Divorce Cause 50 of 2005**

**G.E.G ..... PETITIONER**

- Versus -

**H.P.L ..... RESPONDENT**

**Coram: Before Hon. Justice L. Njagi**

**Mr. Ongera for Petitioner**

**Respondent in Person**

**Court clerk – Kinyua**

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

This petition for divorce was filed in court on 26<sup>th</sup> July, 2005. The petitioner's case is that since the celebration of the marriage, the respondent has been guilty of both mental and physical cruelty against the petitioner; that he has also been guilty of dissipation; and that he has committed adultery on diverse occasions. The petitioner accordingly prays for orders that her marriage to the respondent be dissolved; that the custody of the children be given to her; and that the respondent be condemned with the costs of the petition.

In a crisp answer to the petition, which answer was filed on 8<sup>th</sup> September, 2005, the respondent admits the contents of all the paragraphs of the petition. He further admits that the marriage has irretrievably broken down, and also avers that he has no objection to the said marriage being dissolved. He accordingly prays that the marriage between the parties be dissolved; the petitioner be given custody of the children and the respondent be allowed access to be visiting his children any time he wants until they attain the age of 18 years. He also prays that each party bears its own costs.

At the hearing of the petition, the petitioner appeared by her counsel but the respondent did not show up. Being satisfied that he was served with a hearing notice in sufficient time to attend, the court elected to proceed ex parte. The petitioner gave evidence on oath and stated that the parties got married on 27<sup>th</sup> May, 1993. She produced the original of the marriage certificate and also a copy thereof as her exhibit No.1. The marriage was blessed with two children, a boy and a girl, born on 26<sup>th</sup> September, 1994, and 7<sup>th</sup> March, 1996, respectively. Copies of their certificates of birth were produced as the petitioner's exhibits 2 and 3 respectively.

The petitioner testified that on the day she was admitted to the maternity hospital for the birth of their second child, which was on 7<sup>th</sup> March, 1996, the respondent excused himself saying that he was going to collect a cheque for payment to the hospital. He never came back. Consequently, the hospital bill was

paid by her employer. She produced a copy of the hospital receipt as her exhibit No.4. She also had to pay the doctor's fees. The respondent re-surfaced in November, 1996, when the petitioner had taken the baby for medical care at Kenyatta National hospital. He sold all the household goods, leaving the petitioner with only a bed and a wardrobe. When the parties were cohabiting, their relationship was not good as the respondent used to beat the petitioner and use abusive language, especially after the baby girl was born with a heart condition. The respondent would even attribute that unfortunate condition to prostitution on the part of the petitioner.

Since the respondent deserted the petitioner, he has never supported the petitioner and the children of the marriage in any way. The petitioner has therefore been paying rent, fees and maintenance for the children single handed. She produced a bundle of receipts for school fees for the two children as her exhibit No.5. She asked the court to dissolve the marriage, award to her the custody of the children, and costs.

Addressing the court, Mr. Mwakireti for the petitioner submitted that the petitioner had established the marital offence of desertion and that the marriage had irretrievably broken down. The respondent had also been guilty of cruelty, and on that note he submitted that the marriage ought to be dissolved and a decree issued by the court. He further asked that the two children of the marriage be committed to the custody of the petitioner.

I have considered the pleadings, the oral testimony of the petitioner, and the submissions of learned counsel for the petitioner. With regard to the pleadings, the respondent shamelessly admitted all the allegations levelled at him, hook, line and sinker. These allegations, as set out in the petition, were that since the celebration of the marriage, he had been guilty of both mental and physical cruelty against the petitioner. He also admitted to having physically assaulted the petitioner and using abusive language on many occasions. He further admitted having deserted his matrimonial home and family since 1996, thereby leaving the petitioner and the children without any support. He even admits that he has committed adultery at various times during the subsistence of the marriage. He agrees that the marriage is irretrievably broken down, and further that this petition has not been presented and prosecuted in collusion with him.

This respondent curves out for himself an image of a callous, uncaring and unfeeling father and husband. What kind of man is it, who does not care where his children will sleep, what they will eat, how they will dress, and where they will go to school? His marriage to the petitioner is a sham, and it is not fair to the petitioner and the children that all they have is a nominal husband and father, respectively. It is best that the petitioner be freed from this shell of a marriage so that she can rebuild her life with the knowledge that she is on her own.

I am satisfied that the petitioner has proved her case against the respondent. They have been married for more than three years; the respondent has deserted her for more than three years, and she came to court after more than three years since the date of desertion. She has proved desertion without cause. I therefore order that the marriage between the petitioner and the respondent be and is hereby dissolved. A decree nisi for divorce to issue.

The petitioner will also have custody of the children of the marriage. The respondent may have access to the children at such time and place as will be convenient to the petitioner and the children.

Parties at liberty to apply.

The respondent will meet the costs of this petition.

It is so ordered.

Dated and delivered at Mombasa this 21<sup>st</sup> day of September, 2006.

L. NJAGI

JUDGE