



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

**Divorce Cause 85 of 2006**

**P.W.N.....PETITIONER**

**VERSUS**

**P.N.W..... RESPONDENT**

**JUDGMENT**

On 23.06.06 the petitioner filed petition praying for the following order, namely:-

That the marriage between the petitioner and respondent be dissolved.

Hearing of the petitioner took place on 28.09.06 whereat the petitioner appeared in person while there was no appearance for the respondent.

The salient facts of the case presented before this court may be summarized as under.

The petitioner said in her oral evidence that she was married to the respondent under Kikuyu customary law, and then proceeded to exhibit a certificate of marriage between her and the respondent under the Marriage Act, Cap. 150! That certificate shows that the petitioner's marriage to the respondent took place at the Registrar's Office, Nairobi on 05.09.07 under Kenya's Marriage Act as already recorded. As the petitioner was acting in person in this case, I take it that she is not conversant with the legal implications of the marriage ceremony she underwent *vis a vis* her perception that her union with the respondent was a Kikuyu customary law union. It is not. Even if certain Kikuyu traditional marriage rites took place prior to solemnization of the marriage at the Registrar's Office on 05.09.97, such rites may have provided the preparatory background to the function of 05.09.97 and it is the latter function which in law constitutes the marriage. The position in law then is that the petitioner is deemed to have contracted a statutory marriage on 05.09.97 and it is that marriage which forms the bedrock of the petitioner's relationship to the respondent.

Turning now to the evidence in support of the dissolution sought, it was the petitioner's evidence that after the marriage aforesaid, she and the respondent cohabited in [PARTICULARS WITHHELD] and the two of them were blessed with two issues, namely:-

- a) G.W – a son born in 1984 and
- b) M.W – also a son born in 1987.

The petitioner has been described as an accountant and the respondent as a clerk at the time of the marriage but that the latter is now unemployed.

The petitioner relies on grounds of cruelty and desertion as the basis for seeking dissolution of the marriage.

With regard to cruelty, it was the petitioner's evidence that the respondent has refused and/or neglected to secure a job in order to contribute towards upbringing of the children of the marriage and the family as a whole. The petitioner further complains that the respondent is a habitual drunkard who has taken to demanding, from the petitioner, money from time to time in order to fulfil his desires. Additionally, the petitioner complains that the respondent would, when drunk and at other times even when sober, verbally abuse the petitioner in public and in front of the children thereby causing the petitioner mental pain and anguish. At paragraph 8 (e) of her petition, relating to cruelty, the petitioner avers that:

'8. (e) The Respondent would wake up the petitioner in the middle of the night and forcefully attempt to exercise his conjugal rights and would in turn threaten her if she did not comply and beat her senselessly.'

The petitioner's other complaints in the cruelty series are that the respondent would go to the petitioner's work place without invitation and disrupt the petitioner's work by shouting like an insane person, much to the petitioner's mental torture and shame. Also that the respondent has on several occasions intimidated and threatened the petitioner, occasioning the latter to change houses and that this caused the petitioner to live in fear of her life and she has had to report such incidents to Kenyatta International Conference Centre (KICC) Police Post, Nairobi in 2004.

On the ground of desertion, the petitioner avers at paragraph 8 (h) of her petition as follows:

'8. (h) That the respondent evicted your petitioner from the matrimonial home after bringing home five knives and threatened to kill your petitioner causing your petitioner to run for her life together with children of marriage in 2001.'

It is the petitioner's case that the respondent has been guilty of desertion of the petitioner and matrimonial home. Elaboration of this ground seems to be in paragraphs 6 and 7 of the petition which in part state:

**'6. (i) That the parties have never cohabited since 2001 due to the respondent's eviction and denial of conjugal rights therefore deserting your petitioner.**

7. That it is now over three years since the respondent deserted the petitioner and the matrimonial home.'

The petitioner told the court that she served the respondent with the petition but he never filed any papers in response thereto. She added that the respondent has harassed her even after the eviction. There is in the court file an affidavit of service by one George Mburu, process server sworn on 26.06.06 to the effect that he served the respondent on 23.06.06 with copies of the notice, petition and affidavit in this case and that the respondent accepted service but refused to sign the process server's copies.

On the basis of the foregoing, the petitioner reiterated her prayer for dissolution of her marriage to the respondent.

I have given due consideration to the petition and the evidence tendered in support thereof. The evidence, which is uncontroverted, does establish that the respondent was duly served with the divorce papers pertaining to this case but he never bothered to file response thereto. I take it that the respondent had no answer to the accusations of cruelty and constructive desertion levelled by the petitioner against him and I find both accusations duly proved. Cruelty and desertion are separate matrimonial offences under section 8 of the Matrimonial Causes Act, Cap. 152 and each independently entitles the petitioner to the dissolution sought. Accordingly, I hereby pronounce a decree of divorce and order that the marriage between the petitioner and respondent be and is hereby dissolved. *Decree nisi* shall issue forthwith, the same to be made absolute after expiry of the statutory period of 3 (three) months, upon application therefor. As there is no prayer for any other relief, I make no other order.

Orders accordingly.

**Delivered at Nairobi this 30<sup>th</sup> day of October, 2006.**

**B.P. KUBO**

JUDGE