



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

**MILIMANI LAW COURTS**

**Divorce Cause 109 of 2005**

**H.C.L.....PETITIONER**

**VERSUS**

**D.A.K.P..... RESPONDENT**

**JUDGMENT**

On 16.08.05 the petitioner filed petition dated 03.08.05 praying for the following orders:-

- a) That the marriage between the petitioner and respondent solemnized on 04.05.03 be dissolved.
- b) That the petitioner be given the costs of and incidental to this cause.
- c) That any other or further relief deemed fit be granted.

At the hearing of the petition, the petitioner was represented by learned counsel, Mrs M.S. Samnakay. There was no appearance for the respondent.

The salient facts emerging from the pleadings and evidence tendered before this court may be summarized as under.

The petitioner and respondent are resident and domiciled in Kenya. They got married at Banakrai Bhatt, Nairobi, Kenya on 04.05.03 according to Hindu rites and religion. After the marriage the petitioner and respondent cohabited in Nairobi. There has been no issue of the marriage. The petitioner has been described as a businessman and the respondent as a housewife.

The ground relied upon as a basis for the petition for divorce is that of cruelty. Under this ground, the petitioner has complained that the respondent used to blackmail him with threats to commit suicide by overdosing herself with drugs and on one occasion, i.e. on 06.02.05, she actually did and ended up being admitted in hospital. The petitioner's other complaints in the series include that the respondent totally neglected to cater for the petitioner's feelings and self-respect; neglected and ignored the petitioner's relatives; spread abusive, malicious and baseless talk about the petitioner and his family; did not have time for the petitioner and showed no love, affection or tenderness towards the petitioner; that the respondent was irresponsible with regard to her matrimonial duties; and that eventually she left the matrimonial home on 06.07.03 for good.

An affidavit of service by Eric Ojuro, an Advocate of the High Court of Kenya sworn on 03.10.05 deposes that on 13.09.05 he served a copy of the petition upon the respondent. Petitioner's counsel, Minaxi Saeed Samnakay made a statement on oath on 14.10.05 to the effect, inter alia, that the respondent never entered appearance within the specified period despite service. There is neither a memorandum of appearance nor an answer to petition in the court file. This cause, therefore, proceeded as an undefended cause.

I have duly considered the evidence availed before this court. The conduct narrated by the petitioner against the respondent does indeed constitute legal cruelty and since the evidence thereof is uncontroverted, the court has no option but to accept it. Cruelty is among the grounds for divorce provided for under section 10 of the Hindu Marriage and Divorce Act, Cap.157. I find the cruelty pleaded proved to the satisfaction of the court. 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 30 (thirty) days, upon application therefor. The petitioner is granted the costs of these divorce proceedings.

Orders accordingly.

**Delivered at Nairobi this 26th Day of October 2006.**

B.P. KUBO

JUDGE