



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
Divorce Cause 151 of 2002**

C.N.K..... **PETITIONER**

VERSUS

F.N.N..... **RESPONDENT**

JUDGMENT

This Petition was heard ex-parte after the Respondent or her representative failed to appear for hearing after being duly served.

The Petitioner/husband testified with extreme candidness and struck me as an honest and credible witness.

He gave evidence on his averments made in his amended petition dated 26th January, 2006.

He testified that he got married to the Respondent F.N.N on 4th March, 1995 and cohabited with her in Thika. During their cohabitation two issues of marriage were born:

1. **E.C born on 29th September, 1995 and**
2. **R.D born on 22nd August, 1999.**

They both are resident and citizens of Kenya. He stated that he does not know at present where the Respondent resides or what she does for living.

He deponed that the Respondent was a habitual deserter and have on several occasions since November, 1995 deserted the Petitioner and the children leaving matrimonial home. Lastly, in June, 2001 she left the same never to return. Since that time and also during previous desertion she left the children with the Petitioner. The Petitioner has thus lived with, cared and catered for the two children of the marriage since their birth.

I was shocked to hear him saying that the Respondent told a church Deacon that she regretted ever having children with the Petitioner and swore to drown them if and when they come into contact with her.

She also warned the Petitioner, when she left the home in June, 2001, not to seek reconciliation with her and threatened him of dire consequences if he attempted for the same.

The Petitioner prayed for dissolution of marriage and custody of the two children.

I have stated earlier that I am accepting the Petitioner as a truthful witness and his uncontroverted evidence is accepted by me.

Since the beginning of the marriage the Respondent has acted in manners which a spouse is not expected to behave and her acts of spite and abuse as well as earlier desertion are weighty and can be termed as acts of cruelty.

The last act of desertion was more than threes years prior to filing of the amended Petition and thus in law is desertion upon which the marriage can be dissolved.

The Petitioner denied to have connived at or condoned the acts of the Respondent. He also denied collusion with her in presenting and prosecuting this petition.

In the premises, I find that the Respondent is guilty of acts of cruelty and desertion without reasonable cause and order that the marriage in fact solemnized between the parties on 4th March, 1995 be dissolved.

Decree nisi be made absolute within 60 days from the date hereof.

The two children of the marriage have been in the custody and care of the Petitioner since their birth. The Respondent has not turned her face to look upto them.

I also thus grant the order that the custody, care and control of the two children of the marriage named hereinbefore be granted to the Petitioner.

Orders accordingly.

Dated and signed at Nairobi this 10th day of November, 2006.

K.H. RAWAL

JUDGE

10.11.06