



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NYERI**

**Divorce Cause 3 of 1998**

**G.M.K ..... PETITIONER**

**VERSUS**

**J.W.M ..... RESPONDENT**

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

Dr. G.M.K (hereinafter referred to as the Petitioner) has come to this court seeking to have his marriage to J.W.M (hereinafter referred to as the Respondent) dissolved.

It is the Petitioner's contention that the Respondent has treated him with cruelty, and that the marriage has irretrievably broken down and the parties have been living apart since February 1997.

In answer to the petition the Respondent denied all allegations of cruelty. She maintained that it was in fact the Petitioner who was cruel to her, and that the Petitioner was having an adulterous affair with another woman and merely wanted to have the marriage dissolved so as to marry the other woman. She therefore prayed that the petition be dismissed.

On 12<sup>th</sup> February 2003 hearing of the petition commenced before Hon. Ombija J, the court had however to adjourn before finalizing the evidence of the Petitioner after it became apparent that the Respondent had just filed an affidavit of means to which the Petitioner needed to file a reply.

Thereafter the case was fixed for hearing on two occasions but the Respondent and her advocate failed to attend court despite having been duly served, whereupon this court proceeded with the trial under order 1XB rule 3 of the Civil Procedure Rules.

In his evidence the Petitioner testified that since their marriage, he has on several occasions tried to put up business for the Respondent but the business failed because of her neglect. He also testified that the Respondent had the habit of disappearing from the matrimonial home leaving him with the children. The Respondent was also practising witchcraft and he had discovered some charms in his pillow which Respondent admitted putting there. As a result of the Respondent's conduct the Petitioner suffered stress and depression. He also felt insecure particularly after the Respondent stole a cheque leaf from him forged it and tried to have it cashed. He therefore sent the Respondent back to her parents.

In June 1998, the Respondent conspired to murder the Petitioner. She was arrested charged and convicted of the offence. Copies of the proceedings and judgment of the lower court as well as the High Court judgment which allowed her appeal on a technicality were produced in evidence.

The Petitioner maintained that he was the one taking care of the 4 issues of the marriage and paying for their education and maintenance. He produced appropriate receipts and urged the court to award him custody of the children.

On the above evidence the Petitioner has proved to this court on a balance of probabilities that the Respondent has subjected him to mental cruelty and distress and has even threatened the Petitioner with physical harm. I concur with the Petitioner that this is a marriage which has irretrievably broken down. I

therefore grant the prayers sought and order dissolution of the marriage between the Petitioner and the Respondent. I further order that the Petitioner shall have custody of the two minor children of the marriage i.e. JM and RM.

Each party shall bear his own costs of the suit.

*Dated, signed and delivered this 28<sup>th</sup> day of February 2005*

**H. M. OKWENGU**

**JUDGE**