



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAKURU**  
**DIVORCE CAUSE 3 OF 2003**

**E. D.....PETITIONER**

**VERSUS**

**E.W. M.....RESPONDENT**

**JUDGMENT**

The petitioner, E.D was married to E.W.M the respondent under **the African Christian Marriage and Divorce Act (Cap 151 of the Laws of Kenya)** on the 13<sup>th</sup> of March 2000. The petitioner was then a divorcee whilst the respondent was a bachelor. The marriage between the petitioner and the respondent appears not to have been a happy one. According to the petitioner's testimony, she was duped into marrying the respondent. She testified that she was told that the respondent was a pastor who was going to assist her in her ministry. She later learnt that the respondent had been employed as a watchman at Mobil Petrol Station, Nakuru. She further testified that two months after the celebration of the said marriage, the respondent started having an adulterous relationship with a married woman who had two children and who was residing at Kakamega. The petitioner suspected that the respondent had relationships with other women at Nakuru. This was due to the fact that the respondent used to make disappearing acts in the evening only to resurface at night and refused to consummate his marriage with the petitioner without any apparent reason. The petitioner further testified that when she went to the United States of America, the respondent started having an adulterous relationship with their house help. When she came back from the United States of America she learnt that the house help had been impregnated by the respondent.

It was further her testimony that she had been treated with cruelty. She testified that the respondent physically assaulted her several times to the extent that in one particular beating session, the petitioner sustained injuries on her arms and on her head. The respondent further verbally abused her and was generally mean to her. She stated that she was subjected to constant fear and psychological torture. She testified that the respondent only seem to be interested in her car which could give him an opportunity to impress women. She stated that the respondent defamed her character by portraying her as a bad person and a witch.

She further testified that the respondent did not respect her property. She gave an instance when the respondent took away her generator without her permission and later sold it. She also narrated another instance when the respondent forcefully took away her motor vehicle from her and took it away to his rural home. The said motor vehicle was only returned to the petitioner after petitioner had sought the assistance of the law enforcement agencies. The petitioner testified that she had been separated from the respondent since October 2002. According to the petitioner, her marriage to the respondent had irretrievably broken down; There was no chance that she could be reconciled with the respondent in view of the mistreatment she was subjected to by the respondent. She stated that the respondent was not genuine when he got married to her. In her view, the respondent married her under false pretences. She prayed that the court orders that the marriage between herself and the respondent be dissolved so that she may be at liberty to continue with her ministry.

I have considered the evidence adduced by the petitioner. The respondent filed an answer to the petition denying the averments made by the petitioner. When this petitioner was listed for hearing, the respondent did not attend court. This court was satisfied that the respondent was duly served and ordered that the

hearing of the petition proceeds, the absence of the respondent notwithstanding. Having read the pleadings filed and the evidence offered by the petitioner, the issue for determination by this court is whether the petitioner has established, on a balance of probabilities, that she is entitled to be granted divorce from her marriage to the respondent. The petitioner has narrated how she was mistreated by the respondent. She has stated how she was beaten by the respondent for no apparent reason. She has also testified how the respondent did not respect their marital fidelity by having adulterous liaisons with several women. The petitioner also testified how the respondent did not respect her property. She further testified how the respondent subjected her to verbal and physical abuse. The petitioner further narrated how she was subjected to psychological and mental torture. All the incidences related to this court by the petitioner establishes that the respondent was not a caring husband.

Indeed all the narrated incidences prove that the petitioner and the respondent cannot live together as husband and wife. Their marriage has irretrievably broken down. There is no chance that the said marriage can be saved. The petitioner and the respondent cannot be made to live together when they obviously cause pain to each other. The petitioner and the respondent have been living apart since October 2002. The right thing for this court to do is to grant the prayer sought by the petitioner.

Although the respondent denied the averments made by the petitioner in her petition, the respondent failed to attend court to defend this petition. In the circumstances therefore the petitioner's evidence was uncontroverted. I grant the prayers sought by the petitioner. The marriage solemnised on the 13<sup>th</sup> of May 2000 between the petitioner and the respondent is hereby ordered dissolved. A *decree nisi* for the divorce is hereby granted. The said decree nisi shall be made absolute within three months from today's date.

The petitioner shall have the costs of the matrimonial cause.

**DATED at NAKURU this 18<sup>th</sup> day of February 2005.**

**L. KIMARU**

**JUDGE**