



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
DIVORCE CAUSE NO. 197 OF 2002**

D M KPETITIONER

VERSUS

P K KRESPONDENT

JUDGMENT

The petitioner, D M K K, sought an order to dissolve her marriage to her husband P K K, on the grounds of cruelty, whose particulars she gave in para 7 (a-u) of the petition.

The petitioner also prayed for custody of the minor child as well as maintenance for herself and the children of the marriage, together with school fees and college fees and costs to the petition.

The respondent filed an answer to the petitioner and also cross petitioned for divorce on the grounds of his wife's cruelty whose particulars he detailed in para 6 of his cross petition.

The respondent prayed for the dismissal of the petitioner's petition, and asked for custody of the minor child of the marriage and costs of the cross petition.

However, before the hearing of the petition and the cross petition, the parties recorded consent orders before Hon. Mr. Justice Kubo on 25th November, 2004. These related to the withdrawal of the cross petition by the respondent, to facilitate the hearing of the Divorce Cause filed by the petitioner as an undefended cause, the payment by the respondent of a lump sum to the petitioner as maintenance etc etc.

Because of the above consent orders, the Divorce Cause proceeded as an undefended cause.

The petitioner, D M G , married the respondent, P K K on 14th January 1978, at St. Andrews Church, Nairobi. She produced her marriage certificate as Ex. I in court. They have 3 children whose names and dates of birth are as in para 3 of the petition. They have lived and cohabited as shown in para 2 of the petition.

There have been no previous proceedings between the couple. The petitioner complained of cruelty suffered at the hands of her husband. She gave particulars of such cruelty in paragraph 7 of her petition.

In court during the hearing, the petitioner, testified that she was working at the initial stages of their marriage, but from 1995, she stopped working and became a house wife.

She lamented that there was violence in her marriage, which started in 1979, after the birth of her 1st born child. She recalled that he husband beat her when she was carrying the child who was only 4 months old. That she fell down and got injured as well as the child.

For the years she was employed, the petitioner stopped work at 5.00 p.m. and had to get home by 6.00 p.m., according to the respondent's instructions, or be locked out. At times she was actually locked out, and had to seek refuge in her mother's house. This affected her greatly as she always had tension headaches. The situation was made worse by the fact that her husband used to bang her head on the wall.

The petitioner recalled several instances when her husband beat her in front of the children and the workers, calling her a "prostitute".

She also referred to an incident when her husband dropped her at her mother's house for a party. Her mother offered to drive her back after the party, which she did at 7.00 p.m. but her husband who was already at home refused to open the door. That her mother pleaded with him several times until he eventually opened the door, but he was half naked, which was very embarrassing to her mother who never returned to their house again.

The petitioner again related an incident which occurred in July, 2002 when she was with her husband in England, and she got information that her friend's son had died in Sweden. She sought permission to go, but her husband refused.

The couple returned back home to Kenya, and whilst the respondent went to Dubai to visit his girlfriend, the petitioner went to Sweden to comfort her friend who was bereaved. The friend sent her the return air ticket, and she traveled to Sweden in September 2002. Upon return, she found that most of her personal belongings had been removed from the master bedroom to another room. The respondent never talked to her, and she too did not talk to him.

It was after this incident that the defendant filed the petition on 6th November, 2002. She, however, continued living in the matrimonial home until early this year, 14th January, 2005, as she had nowhere to go. They did not talk and share anything, as they bought and cooked their food separately.

The petitioner said that all their children are in the United Kingdom, and have not been back home since she moved out. She referred to the consent order recorded in court, after the lawyers had agreed on what she should take from the house, and her future maintenance.

The petitioner produced a Valentine's card, and a photo of her husband and his girlfriend, A K . The Valentine card was sent by her.

The petitioner does not want to go back to her husband whom she described as a very cruel man. She did not ask for custody of the children because they are all aged above 18 years old and the one who is still in school in England is being cared for by the respondent.

Counsel for the petitioner made written submissions which I have read through and considered. I have also considered the petitioner's oral evidence on record. From that evidence which was not challenged, I find that the respondent was cruel to the petitioner as testified. It was his cruelty which caused the break down of the marriage. I therefore grant an order to dissolve the marriage between the petitioner and respondent herein, solemnized on 14th January 1978, at St. Andrews Church, P.C.E.A. Nairobi.

I direct the decree nisi to issue straightaway today, and the same will be made absolute within a period of one month from today.

Dated at Nairobi this 28th day of April, 2005.

JOYCE ALUOCH

JUDGE