

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

**AT NAIROBI (MILIMANI LAW COURTS)
DIVORCE CAUSE NO.68 OF 1997.**

A.N.K.....PETITIONER.

VERSUS

C.B.M.K.....RESPONDENT.

JUDGEMENT

The petitioner in this cause Alice Nyambura Kitili has petitioned for the dissolution of the marriage solemnized on the 5th February, 1994 between the petitioner and Charles Boniface Muloki Kitili at St. Augustine Church Nairobi.

After the said marriage, the couple cohabited at Kileleshwa Nairobi and there are two issues one of whom was born out of wedlock but the respondent had accepted him into the marriage. The issues are as follows: -

- a) E.K
- b) B.W.

The Respondent filed a Reply to the Petition and the cause was certified as defended cause. However, the respondent and the Advocate failed to turn up at the hearing of the petition. The petitioner testified in prosecution of her petition and gave a detailed account of evidence of cruelty that she faced in the marriage. This marriage was faced with difficulties and tension from the beginning.

According to the petitioner who was a Teacher housed by the school at the K[...] High School when they got married, the respondent joined her at the flat and continued to reside there. This flat was next to the school dormitory. The respondent would come home drunk and would shout, which used to attract the attention of the students. This humiliated the petitioner who was teaching the students Guidance & Counseling as the students witnessed this treatment when the petitioner was abused and insulted.

One time the petitioner was burnt while cooking with the pressure cooker but the respondent refused to take her to hospital. He found her writhing in pain. He excused himself briefly saying he had to see somebody briefly and return to take her to hospital but he did not come back until 4.00a.m. the next day. This made the injuries worse.

The Respondent continued neglecting the petitioner and coming home late. The petitioner was hospitalized again in 1994 when the baby was small, she underwent painful operation and stayed in hospital for 4 days.

The respondent did not visit her in hospital and nor did he sleep at home. The children were abandoned with the maid and went without food. The respondent also neglected to share the parental responsibilities. The petitioner has single handedly looked for schools for the children and paid their school fees. She produced a bundle of receipts she has been paying school fees, rent and other utility bills.

In 1999, the petitioner was asked to leave the school because the school management could not handle the respondent's behaviour. At that time, the respondent was transferred to work in Mombasa. The petitioner therefore looked for a house and moved with the children and between 1997 to 1999 there was

no contact with the respondent. Towards the end of 1999, the parties got together briefly but the respondent's lifestyle did not change; as he soon started mistreating the first child calling him a bastard and in the year 2001 he packed his things and left. The petitioner has never heard of him. He has never visited the children despite the fact that the respondent lives in the same house.

I have considered the evidence tendered by the petitioner, the pleadings filed herein and I am satisfied that the petitioner was treated with cruelty. Indeed the evidence adduced herein clearly shows that this was a short and difficult marriage. The petitioner encountered very painful experience and the burdens of providing for the children.

Accordingly I am satisfied that the marriage herein solemnized on 5th February, 1994 should be dissolved. The decree nisi shall issue after a period of six months.

The petitioner shall have the custody of the children. Since the respondent had not formally adopted the first child Brian Waweru, I will order that the respondent do contribute towards school fees and related expenses for E.K at the rate of Kshs.7, 000 per month with effect from 1st January, 2004 until further orders.

Judgement read and signed on 23/1/2004.

Orders accordingly.

M. KOOME J.

23/1/2004