



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI (MILIMANI LAW COURTS)**  
**DIVORCE CAUSE 146 OF 02**  
**F.G.C.....PETITIONER.**  
**VERSUS**  
**H.M.C.....RESPONDENT.**

**JUDGEMENT**

The Petitioner in this cause has petitioned for an order of Judicial separation from the Respondent. In his answer to the Judicial separation, the respondent has cross-petitioned for dissolution of the marriage.

The respondent alleges that the petitioner was cruel to him and has committed adultery. Both the petitioner and the respondent testified before this court in support of their respective claims. The petitioner gave a detailed account and narrated incidences of cruelty, which I will summarize and analyze.

The parties herein have been married for a total of 27 years. They started cohabiting in 1976 and on 27th June 1981 they formalized their marriage under the African Christian Marriage and Divorce Act at the All Saints Cathedral.

They cohabited as husband and wife in Nairobi and in Western Province. They have five issues of the said marriage namely: -

- a) V.C (born on 20th March, 1977)
- b) C.C (Born on 31st May 1978)
- c) S.M.C (born on 29th December, 1978)
- d) S.E.C (born on 20th October, 1981)
- e) A.E.C (Born on 15th May, 1983)

Prior to the marriage, the respondent had 3 sons who were born before the union. The petitioner is a lecturer at Kaimosi Teachers College while the respondent is a businessman.

The petitioner testified how she was subjected to acts of cruelty in 1998. The respondent came to the station where the petitioner was working at M[.....]in Vihiga District. He assaulted both the petitioner and the daughter S.M.C and both were forced to take refuge in the matron's house. This incident caused the petitioner embarrassment, as she was the Head of the School. This followed by another incident in August

1999 at the matrimonial home in Chavakali where the respondent locked the petitioner in the bedroom, assaulted her and hurled insults at her in the presence of the children.

On 17/2/2002, the respondent assaulted the petitioner; he struggled her whereby she sustained bodily injuries for which she was treated at the hospital. She produced the treatment card, the police P3 Form and the sick sheet she obtained as a result of the said injuries.

Apart from the physical and verbal abuse that the petitioner encountered, the respondent also neglected to provide for the family, the petitioner has single handedly struggled to educate the children. She produced a bundle of receipts from 1997 for the children's school fees.

The respondent denies these allegations. As of the assault incidence at Madira Girls, the respondent explained that he only slapped their daughter S.M.C who was pestering him. The petitioner then asked S.M.C to follow her and they left the Respondent in the house. The Respondent alleges that the petitioner suffers psychological illness known as schizophrenic. He alleges that the petitioner was having an affair with other men. He admitted breaking the door of their house in Chavakali in January, 2002. He claims to have been provoked by the petitioner who he alleges was committing adultery.

I have carefully evaluated the evidence by both parties and their pleadings, whichever way one looks at this marriage, one party wants a separation order and the other party wants an order for divorce. Hence the two cannot stay together. None of them called a witness to support their evidences. It was each word against the other. The petitioner however produced documents to support the allegation of assault and the treatment that she received. She also produced receipts for school fees paid for the children's school fees to support the allegations of financial neglect by the respondent. In this regard, I am satisfied that the petitioner should be granted the relief sought. Hence the petitioner is no longer bound to cohabit with the respondent. Since the children are of age, the issue of custody does not arise, although the court takes note that the children are still enrolled in college and need parental support and that the petitioner is still providing for them.

The other issue that the court was asked to look into was the prayer of maintenance by the petitioner. The respondent lives at the matrimonial home and he runs a security firm. The petitioner is a lecturer, rents a house and takes her parental obligations seriously; she stays with one of the children and pays university fees for Sheila and Annette. The respondent has a legal obligation to support the petitioner and I hereby order that he should pay a sum of Kshs. 5,000 per month being maintenance to the petitioner with effect from 1st January, 2004 and every other succeeding month until further orders. Each party shall be at liberty to apply. The petitioner is also awarded costs of this petition.

Orders accordingly.

Judgement read and signed on 23/1/2004

M. KOOME J.

23. 1. 2004