



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT ELDORET**

**DIVORCE CAUSE NO.3 OF 2002**

**N.C.M ..... PETITIONER**

**AND**

**J.R.L ..... RESPONDENT**

**A.C .....CO-RESPONDENT**

**JUDGEMENT**

This is a petition for divorce filed by the petitioner **N.C.M** against the respondent **J.R.L** in a petition dated 20th June, 2002. The respondent filed an answer to the petition dated 1st July, 2002 but later filed an amended answer to petition dated 13th January, 2003 where he named one **A.C** as a co-respondent.

At the hearing of the petition counsels for the petitioner, the respondent and co-respondent agreed that the entire claim against the co-respondent be abandoned, and the co-respondent was struck off from the list of the parties. The parties also agreed that they would abandon ground 10 of the petition. The petitioner also abandoned prayers 11(d), (e) and (f) as they relate to her. Prayer 11(c) had already been dealt with by Justice Etyang. The parties agreed to reserve the issue of custody, care and maintenance of the child, which would be pending to be determined later. They agreed to lead evidence only on ground 9 of the petition, which dealt with particulars of cruelty.

Only one witness i.e. the petitioner **N.C.L** testified in the case. She stated that she was married to the respondent Joel Rotich Lessan on 12th November, 1998. They were married under the Marriage Act at the District Commissioner's office Uasin Gishu District at Eldoret. She stated that they stayed together at various estates in Eldoret, but ceased to stay together in June, 2002. They had a child of the marriage **K.L** who was born in 1997 before they got married. When they got married she was unemployed, but she was now working as data processing assistant at the Moi Teaching and Referral Hospital.

She was seeking dissolution of the marriage because shortly after they got married, the petitioner who was a medical doctor employed by Moi University and was pursuing further studies in Nairobi, started and continued denying her of conjugal rights. From May, 2002 to date the denial of conjugal rights has been continuous. Prior to that he was staying long periods in Nairobi and whenever they met he was making all manner of lame excuses to avoid having sex with her. Secondly, though the respondent was earning 80% of his salary during the studies, he was not providing for maintenance of the petitioner and the child. He was leaving them with no money. She stated that though the court made an order in December, 2002 for the respondent to provide maintenance for her and the child the respondent has not complied with the court order. The respondent has also not paid school fees for the child as ordered by the court. Thirdly the respondent on several occasions used to tell the petitioner that their marriage was over thus causing her psychological torture. The communication between the petitioner and the respondent became terrible as he used to leave the matrimonial home sometimes without saying where he was going to and never communicated to her. Attempts to reach the respondent on the mobile telephone were not successful as the response was that he could not be reached. She was therefore asking the court to dissolve the marriage as it had become irreconcilable.

Though the respondent filed a response to the petition and a cross-petition, he opted not to testify to contest the issues raised for the dissolution of marriage. The cross-petition filed had also supported a divorce.

Considering the grounds of cruelty that were testified to by the petitioner i.e. denial of conjugal rights, failure to provide necessaries to the petitioner and child of the marriage, and the very strained communication between the spouses and the fact that the petitioner and respondent have been staying separately and since the respondent did not testify to challenge any evidence given by the petitioner, I find that the marriage between the petitioner and the respondent has broken irretrievably. It is only fair to dissolve the marriage. I therefore allow the petition for divorce and dissolve the marriage between the petitioner and respondent. Each of the petitioner and respondent will bear their respective costs of the petition. It is so ordered.

**Delivered and Dated at Eldoret this ..... Day of ..... 2004.**

**George Dulu,**

**Judge**