



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**DIVORCE CASE NO 71 OF 2002**

J G G.....PETITIONER

**VERSUS**

K S M.....RESPONDENT

**JUDGMENT**

The Petitioner herein filed this Petition against the Respondent on 10th April 2002 seeking inter -alia for dissolution of their marriage solemnized on 18th April 1998.

The Petitioner's marriage to the Respondent was conducted at Buruburu Catholic Church in Nairobi under the provisions of the Marriage Act (Cap 150) consequent to which ceremony a marriage certificate number 665371 was issued by the presiding Marriage Officer. Subsequently the Petitioner and the Respondent commenced cohabitation as man and wife in House No. 242 Umoja Estate in Nairobi.

The Petitioner and the Respondent were blessed with one issue of marriage, a son namely J F GG who was born on 14th January 1999. The Petitioner seeks for dissolution of the said marriage to the Respondent on grounds of cruelty, adultery and desertion as particularized in paragraph 6 of the said Petition. Upon being served with a copy of the Petition and Notice to Appear, the Respondent duly entered appearance and filed an answer together with a Cross Petition and prayed for dissolution of the said marriage on grounds of adultery, cruelty and desertion on the part of the Petitioner as particularized separately in paragraphs 4,5 and 6 (renumbered) of the said Cross Petition. The Petition and the Cross Petition came up for hearing on 11th December 2003, 22nd January 2004, 22nd April 2004 and for submissions on 13th May 2004 during which both the Petitioner and the Respondent gave evidence in support of their respective suits.

The Petitioner testified that the Respondent had become ungovernable, abusive, arrogant unfaithful to him and that she had finally deserted matrimonial home on 16th June 2001. Attempted reconciliation had failed and that because of her conduct, the marriage had irretrievably broken down. The Petitioner denied having been cruel or unfaithful to the Respondent nor having deserted the matrimonial home as alleged.

The Respondent testified that the Petitioner has been unfaithful and cruel to her and that by reasons of his constant violence she was forced to leave the matrimonial home. She gave evidence of various incidents of violence exerted on her by the Petitioner even after she had left the matrimonial home and cited the incident of 13th August 2003 during which the Petitioner unlawfully entered her residence and physically assaulted her. The Respondent further testified that her marriage to the Petitioner has been violent and incompatible from the beginning especially because of constant physical and other non-physical confrontation on the part of the Petitioner who appeared obsessed with accusation of unfaithfulness on her part. The Respondent has by such conduct on the part of the Petitioner suffered physical injuries and mental trauma. The Respondent denied ever having been unfaithful or cruel to the Petitioner and stated that she deserted the matrimonial home because of the violence visited unto her by the Petitioner. She further also testified that the marriage to the Petitioner has irretrievably broken down

particularly because all attempts at reconciliation have come to naught.

Independent evidence was given to support the fact that the marriage of the parties herein has irretrievably broken down.

Both the Petitioner and the Respondent have in addition also prayed for custody of the only child of marriage. The Respondent has also sought for the confirmation and simultaneous enhancement of the alimony pendente lite and maintenance orders for the said child.

I have carefully considered the testimony of both the Petitioner and the Respondent. Their marriage has from the evidence tendered indeed been both acrimonious and stormy from the very beginning. I have in the circumstances scrutinized and inquired into the alleged grounds of divorce as contained in both the Petition and the Cross Petition. I am satisfied that notwithstanding the seemingly abrasive and unrestrained behaviour of the Respondent, the Petitioner's conduct towards the Respondent amount to persistent cruelty which climaxed in the incident of 13th August 2003. I am satisfied that it was as a consequent of the Petitioner's cruelty and intolerable conduct towards the Respondent that the Respondent was compelled to leave the matrimonial home. As was held in *Gollins Vs Gollins* [1963] 2 ALL ER 966, one is guilty of cruelty,

*"If without just cause or excuse you persist in doing things which you know your wife will probably not tolerate and which no ordinary woman would tolerate whatever your intention may have been" per Lord Reid at p. 974.*

I am thus satisfied that the said marriage of the Petitioner to the Respondent has irretrievably broken down on ground of cruelty of the Petitioner to the Respondent as particularly more pleaded in the said Cross Petition. I am unable to make any finding on the other grounds of divorce for want of adequate evidence.

I am satisfied that there has not been any connivance or condonation on the part of Respondent and further that no collusion exists between the Petitioner and the Respondent. Lastly, I am satisfied that both the Petition and the Cross Petition have not been presented or prosecuted in collusion and further that there has not been unreasonable delay in presenting or prosecuting the Cross Petition.

On the basis of the evidence adduced, I am satisfied that the case for the Respondent has been proved beyond reasonable doubts, and I quote;

*" I am of the opinion that, when consider ring the question of standard of proof requisite to establish the commission of a matrimonial offence, the safe and proper direction should be that the court must be satisfied beyond reasonable doubts".....per Law J.A. in Wangari Mathai Vs Mathai [1980] KLR 1 54 P. 159*

I hereby therefore pronounce a decree of divorce and order that the marriage between the Petitioner and the Respondent be and is hereby dissolved. A decree nisi shall henceforth issue, the same to be made absolute upon application. I grant custody of the said child marriage to the Respondent with unlimited access to the Petitioner. The Respondent is now in gainful employment following completion of her training course in mass communication and tourism. Her circumstances are not similar to those obtaining in the case of *Karanu Vs Karanu* [1988 ] KLR 809 . Her income should be taken into consideration in assessing her claim for payment of alimony and maintenance expense of herself and the said child. She too has an even duty as a parent. I am not satisfied that the Petitioner has an income of more than shs. 21,000/- per month. I accordingly order the Petitioner to be paying the Respondent monthly alimony sum of Shs. 4,000 in addition to a further sum of shs. 6,000 per month for maintenance and expenses of the said child of marriage until further orders. I further order the Petitioner to pay the Respondent costs of this Petition.

It is so ordered.

DATED DELIVERED AND SIGNED AT NAIROBI THIS 3rd DAY OF June 2004

P. J. KAMAU

AG. JUDGE