

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

DIVORCE CAUSE NO 178 OF 2003

A N K.....PETITIONER

AND

M C N.....RESPONDENT

J U D G E M E N T

On 18th December 2003 A N K filed this Petition against M C N for dissolution of their marriage formally solemnized on 31st December 1999.

The Petitioner's marriage to the Respondent was conducted at the Don Bosco Catholic Church in Nairobi under the provisions of the Marriage Act (Cap 150), and a certificate of marriage was duly issued by the presiding Marriage Officer. Subsequently, the Petitioner and the Respondent commenced cohabitation as man and wife, and established a matrimonial home firstly at South "C" Estate in Nairobi and thereafter at Mavoko, Athi River. According to the Petitioner, the said marriage was blessed with one child namely Makayla Nyambura Kirori born on 1st December 2000.

The Petitioner seeks for dissolution of the said marriage to the Respondent on ground of cruelty as particularized in paragraphs 9 of the said Petition, the other ground of desertion having been determined as unsustainable. Upon being served with a copy of the Petition and Notice to Appear, the Respondent duly entered appearance but failed to file an Answer within the time prescribed by the relevant Rules. When the Petition came for hearing on 10th June, 2004 the said Respondent was, even upon having been duly served, absent and thus the hearing proceeded as undefended cause.

I have carefully considered the testimony of the Petitioner. I have also scrutinized and inquired into the alleged ground of divorce as contained in the petition suit. I am satisfied that the Respondent has during the subsistence of the said marriage been persistently cruel to the Petitioner on the basis of the evidence of the Petitioner and stated conduct of the Respondent as outlined in paragraph 9 of the said Petition. I am satisfied that the said conduct constituting persistent insults, neglect, extravagant demands and erratic behaviour was intolerable and thus grave and weighty and psychologically traumatizing to the Petitioner to amount to cruelty. I am thus satisfied that the said marriage of the Petitioner to the Respondent has irretrievably broken down on the singular ground of cruelty of the Respondent to the Petitioner as particularly more pleaded in the said Petition.

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

I am satisfied on the basis of the evidence adduced that the case for the Petitioner has been proved beyond reasonable doubts. 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 make no orders as to custody and maintenance of the said only child of marriage as determination thereof is presently pending in the lower court, but order that each party do bear their respective costs of this petition suit.

DATED DELIVERED AND SIGNED at Nairobi this 24th day of June, 2004.

P. J. KAMAU

AG. JUDGE