

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI
DIVORCE CAUSE NO 36 OF 2003

RC.....PETITIONER

VERSUS

MTA.....RESPONDENT

JUDGMENT

On 6th March 2003 RC filed this Petition against MTA for dissolution of their marriage solemnized on 4th October 1996.

The Petitioner's marriage to the Respondent was conducted at the Office of the Registrar of Marriages in Nairobi under the provisions of the Marriage Act (Cap 150). A certificate of marriage number (particulars withheld) was issued by the presiding Marriage Officer. Subsequently, the Petitioner and the Respondent commenced cohabitation as man and wife, and finally established their matrimonial home at Kahawa Garrison in Nairobi.

The Petitioner seeks for dissolution of the said marriage to the Respondent on ground of cruelty as particularized in paragraph 6 of the said Petition. Upon being served with a copy of the Petition and Notice to Appear, the Respondent failed to enter appearance or to file an Answer within the time prescribed by the relevant Rules. When the Petition came for hearing on 4th March 2004 there was no appearance for the Respondent. The hearing therefore proceeded by way of an undefended cause during which the Petitioner prosecuted her case in person.

I have carefully considered the unrepresented 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 been cruel to the Petitioner on the basis of the evidence of the Petitioner and stated intolerable conduct of the Respondent as outlined in paragraph 6 of the said Petition. As was held in **Gollins -v-. Gollins [1963] 2 ALL E.R. 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 page 966.**

I am also satisfied that the Respondent did without reasonable cause desert the Petitioner and has continued to be in such desertion for a period of more than three years preceding the presentation of this Petition having deserted the Petitioner in or around the year 1997. I am thus satisfied that the said marriage of the Petitioner to the Respondent has irretrievably broken down on ground of cruelty of the Respondent to the Petitioner as particularly more pleaded in the said Petition and on the said other ground of desertion as adduced in evidence during the hearing. 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 doubt, and I quote:

“I am of the opinion that, when considering the question of the 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. **Wangari Mathai –vs- Mathai 1980 KLR 154 at 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. The Petitioner having foregone her entitlement to costs, I make no orders as to costs.

It is so ordered.

DATED and DELIVERED at Nairobi this 11th day of March 2004

P. J. KAMAU

AG. JUDGE