



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI**

**DIVORCE CAUSE NO 30 OF 2004**

**YBM.....PETITIONER**

**AND**

**MMI.....RESPONDENT**

**JUDGMENT**

On 8th March 2004 YBM brought this Petition against MMI for dissolution of their marriage formally solemnized on 1st March 1996, following their earlier customary marriage contracted on or around the year 1981.

The Petitioner's statutory marriage to the Respondent was conducted at the Registrar's Office, Attorney General's Office in Nairobi under the provisions of the Marriage Act (Cap 150), and a certificate of marriage number [*Particulars withheld*] was duly issued by the presiding Marriage Officer. Subsequently, the Petitioner and the Respondent continued cohabitation as man and wife, having already established a matrimonial home at Kariobangi South Estate House No [*Particulars withheld*] in Nairobi. According to the Petitioner, the said marriage was blessed with three children namely AKM born on 29th April 1984, BMM born on 6th May 1988 and ENOM born on 20th December 1990.

The Petitioner seeks for dissolution of the said marriage to the Respondent on ground of cruelty as particularized in paragraph 7 of the said Petition, the other ground of adultery having been determined as unsustainable. Upon being served with a copy of the Petition and Notice to Appear, the Respondent failed to Enter Appearance or file an Answer within the time prescribed by the relevant Rules. When the Petition came for hearing on 7th October, 2004 the said Respondent was absent and thus the hearing of this Petition 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 7 of the said Petition. In line with the holding in the case of **Gollins Vs Gollins (1963) 2 ALL ER 966**, I am satisfied that the said conduct constituting persistent insults, neglect, assault, and battery, threat to kill and physical abuse was intolerable and thus grave and weighty, distressful, embarrassing and emotionally traumatizing to the Petitioner to amount to cruelty. I thus adopt the holding in *Russel Vs Russel (1897) P.322 where Lopez L.J. said:*

“there must be danger to life, limb or health bodily or mentally or a reasonable apprehension of it to constitute cruelty.”

I am thus satisfied that the test in Russell's case(supra) has been met and that therefore 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 in accordance with the holding in the case of **Wangari Mathaai Vs Mathaai (1980) KLR 154** 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 order that custody of the eligible children of marriage be and is hereby granted to the Petitioner with unlimited access to the Respondent until further orders. I further order that the Respondent be paying to the Petitioner a sum of shs. 15,000/- every month towards her maintenance and that of the children of marriage until further determination and which payment shall be effected through the office of the counsel for the Petitioner by 5th of every month henceforth. It is further also ordered that the Respondent meets the costs of this Petition suit.

**DATED DELIVERED AND SIGNED at Nairobi this 28th day of October, 2004.**

**P. J. KAMAU**

**AG. JUDGE**