



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT KISII**  
**DIVORCE CAUSE NO.1 OF 2003**

**TBN ..... PETITIONER**

**VERSUS**

**JNA ..... RESPONDENT**

**JUDGMENT**

The petitioner **TBN** petitioned this court for the dissolution of the marriage between her and the Respondent **JNA**. She also prayed to be granted custody of the four children of marriage. She too had prayed for an order of their maintenance but she abandoned that prayer. Lastly she prays for costs.

The Respondent did not file any reply to the petition despite being properly served. Petition therefore proceeded for formal proof.

Petitioner told court that they got married in 1985 under customary law.

On 30th October 1999 they solemnized their marriage at GEKOMO II S.D.A. CHURCH under African Christian Marriage and Divorce Act. The marriage was blessed with four children namely SM, YK, EB and AN. She said Respondent left home last year in February. During their marriage he had been cruel to her. He was assaulting and harassing her. She gave an example of an incident which took place on 25th February 2002 when he assaulted and injured her when she asked him where he had been. She reported the incident to police and went for treatment.

Again on 10th and 11th March 2002 he assaulted her and the children. He assaulted her again on 26/3/03 and he reported to the police.

She further said that since the year 2000 he had not been maintaining her and the children. He has not been paying their school fees. He too has been harassing the first daughter saying he was not her biological father.

Lastly she told court that her husband has been having relationships with other women.

Petitioner called her first daughter SM who confirmed that her father left them since the year 2002 and they don't know where he is. She testified that it was the petitioner who has been taking care of her and other children. She has been paying school fees.

Sheila also said her father used to beat the petitioner.

I have considered the evidence. It is clear from the evidence of PW1 & 2 the marriage between the petitioner and respondent have been a rocky one. She told court that he has been cruel to her. He has been assaulting and harassing her. This was confirmed by PW2. This evidence was not contraverted. Respondent did not even bother to file a reply to the petition. The petition had clearly set out particulars of cruelty.

I therefore find that the Respondent has been cruel to the petitioner and the marriage between the two has irretrievably broken down. I accordingly issue an order of Divorce Nisi dissolving the said marriage. I also grant the petitioner custody of the four children of the marriage. Petitioner will also have costs of this petition.

It is so ordered.

Dated and delivered at Kisii this 9th day of December 2004.

**KABURU BAUNI**

**JUDGE**

Petitioner present

N/A for Respondent