



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI**  
**DIVORCE CAUSE NO. 160 OF 2003**

**HJS..... PETITIONER**

**VERSUS**

**JGS..... RESPONDENT**

**JUDGMENT**

The petitioner (whose maiden name was **HCM**) and the respondent are wife and husband, respectively, having contracted a Hindu marriage under the Hindu Marriage and Divorce Act (Cap. 157) here in Kenya on 17.02.79. The petitioner states at paragraph 1 of the petition that the marriage was contracted at Wajir Road in Mombasa while the marriage certificate she produced indicates the place of marriage as Malindi Anyway, nothing turns on this discrepancy and I shall disregard it. Her petition, which was filed in the High Court, is, premised on the matrimonial offences of cruelty and desertion.

It was averred by the petitioner that after her marriage to the respondent, the two of them cohabited in various parts of Nairobi, Kenya between 1981 – 1984 and between 1988 – 1996 while during the years 1985 – 1987 she and the respondent cohabited in Toronto, Canada. There is no child of the marriage.

A number of the petitioner's accusations against the respondent were in the form of generalized statements like : discrediting the self worthiness of the petitioner; humiliating the petitioner in front of the respondent's friends and neighbours hereby increasing the harsh treatment of the petitioner; or committing adultery with various women. No specific incidents were cited or evidence adduced by the petitioner to substantiate such generalized accusations. Attention of the petitioner is drawn to the danger in relying on generalised and unsubstantiated accusations like the above, as such approach could in appropriate cases lead to disastrous consequences: see this court's Judgment in Divorce Case No. 17 of 2004, *Marian Wodskou Gunson - vs – Colin Richard Gunson*.

Other aspects of the petition plus the petitioner's oral testimony zeroed in on accusations against the respondent which may be summarized as under. The petitioner complained that the respondent neglected her and failed to give her financial, moral or any support. Another complaint lodged by the petitioner was that the respondent physically assaulted her on various and diverse dates. It was the respondent's habit, the petitioner stated, that he would leave the matrimonial home at will without saying where he was going and staying away for a week or even ten days and returning when he felt like. Enquiries by the petitioner as to where the respondent had been usually attracted a lot of shouting from the respondent. The court sought to know from the petitioner as to how many times the respondent ran away from home and she said it was about 5 – 6 times. The last of such disappearances was on 30.09.96. On this occasion the respondent beat up the petitioner and next day, i.e. on 04.09.96, he walked out of the matrimonial home, never to be seen there again.

The petitioner complained that the respondent's aforesaid conduct resulted in her suffering severe chronic depression, leading to her drastic loss of weight and suffering intense bouts of depression but her condition did not seem to be a matter of concern to the respondent. The petitioner summed up her complaints by saying that after suffering the inhuman treatment she ascribed to the respondent as above and finding no support was forthcoming from him, she concluded that her marriage to the petitioner had irretrievably broken down.

On 04.10.04 the petitioner applied under certificate of urgency for an early hearing date of her petition. This was after the cause initiated by her petition was fixed for hearing twice but failed to take off because it could not be reached. Her application under certificate of urgency was supported by her affidavit sworn

on 04.10.04. She deponed in that affidavit that her relatives are in the UK although she has a Kenyan passport. She described herself as having become desperate financially such that she had to have recourse to being accommodated by a well-wisher. She expressed desperate and urgent need to join her relatives in the UK in order to get out of her current psychological problems brought about by the respondent's neglect of her. To that end the applicant has secured a UK visa. She added that her predicament had been compounded by information given to her lawyer by a process server called David Kuya that the respondent had now disappeared from the A (Old Age Home) where he used to stay, which implies that the respondent's whereabouts were now unknown.

The petitioner described herself in her petition as a housewife domiciled in Kenya while she described the respondent too as being domiciled in Kenya and unemployed. The petitioner also stated that she has not been accessory to, connived at or condoned the respondent's cruelty and desertion. Finally she added that she has not presented or prosecuted her petitioner in collusion with the respondent.

Having regard to the foregoing, the petitioner prayed for the following orders:-

- (a) That her marriage to the respondent be dissolved.
- (b) That the respondent do pay the costs of this suit.
- (c) That she may have such further or other relief as may be just and fit to grant.

The petitioner was represented in this cause by learned counsel, Mr. V. Sharma. He deponed in his affidavit of service sworn on 01.12.03 that as petitioner's counsel he personally served the respondent on 22.11.03 with a duplicate copy of notice, petition and affidavit together with supporting annexures in this cause and that the respondent accepted service but refused to sign the said counsel's copies. This is no evidence in the file that the respondent filed answer to the petition and indeed on 30.01.04 petitioner's counsel filed summons for registration certificate for the parties to attend the registrar in chambers for orders, inter alia, that directions be given as to the place of hearing of the cause as an undefended cause. And when the cause eventually came up before me on 11.11.04, the respondent was not present, neither was he represented by counsel and the cause proceeded to hearing undefended. The result of this is that the petitioner's averments and evidence remain uncontroverted. There is no independent evidence, such as medical evidence, on the various accusations leveled by the petitioner against the respondent but it can be inferred from the respondent's non response to the petition that he had no defence to offer.

I have given due consideration to the petitioner's averments and evidence against the petitioner as recorded above. I also had the benefit of watching the petitioner as she testified before me. I have no reason to doubt the petitioner's evidence against the respondent and I believe her. The bottom line of her uncontroverted evidence is that the respondent has treated the petitioner in an inhuman and cruel manner and eventually deserted her. I am satisfied that there is no marriage left between the petitioner and the respondent to talk about. Accordingly, I hereby pronounce a decree of divorce and order that the marriage between the petitioner and the respondent be and is hereby dissolved. Decree nisi shall issue forthwith, the same to be made absolute after expiry of a period of seven (7) days. As the respondent is reported to be unemployed and at large, any order for him to pay costs would probably be an exercise in futility and I make no order as to costs.

Orders accordingly.

Delivered at Nairobi this 2nd day of December, 2004.

**B. KUBO**

**JUDGE**