



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI**  
**DIVORCE CAUSE 55 OF 2002**

**A.S. P.....PETITIONER**

**VERSUS**

**S.N.H.S.....RESPONDENT**

**JUDGMENT**

The petitioner got married to the defendant on 7 February, 1995 and 17th February, 1996, respectively.

The first marriage was in England, under the Marriage Act, and the second marriage was in Nairobi, under the Hindu Law. The petitioner produced the original marriage certificate, given to her in 1995. The couple had a daughter aged 3½ years old.

She complained that her husband had been cruel to her, ever since they got married as he started beating her and abusing her almost everyday since the beginning of their life together as husband and wife. She also discovered that he used to smoke “marijuana”, and became very cruel and abusive after the smoking sessions. He even beat her up when she was pregnant.

The respondent left his employment in December 2000, saying that he wanted to go to England. He went away for 6 months. The petitioner moved back to live with her parents because she could not afford to pay house rent and also look after her children.

The respondent returned in June 2001, and joined her in her parents’ house, but left in March 2002 as he continued to abuse her even in front of her parents. The petitioner decided to file this cause, as she was satisfied that she did not want to live with him any more.

When the respondent was served with the Divorce petition, he reacted by coming to abuse her and shout at her at her parents’ home. He also threatened to take away the child of the marriage. The petitioner lamented that the respondent is not making any contribution towards the maintenance of the child or herself.

The petitioner has since bought a house of her own on mortgage. She has invited her parents to live with her to help her look after her daughter as her husband has abandoned her and the baby. She fears that her husband who is a British citizen, might take the child and run to Britain with her. She prayed the court to dissolve her marriage to the respondent and give her custody of her daughter.

I have considered the evidence of the petitioner, which evidence I noted was not challenged, though the respondent had a chance to challenge it, if he so wished. I believed her evidence which also showed that she did not condone or connive at the respondent’s cruelty.

From that evidence, I proceed to grant an order to dissolve the marriage between the petitioner and the respondent. I also award the custody of the only child of the marriage to the petitioner. As the respondent did not ask for access, I will not make any orders in his favour. As the petitioner expressed fears that the respondent might abduct the child, I grant an order of injunction to restrain the respondent from interfering with or visiting the petitioner and the child of the marriage, whether at home, school, work or otherwise unless the court gives any orders or directives in this respect.

I order the respondent to pay costs of this Divorce petition, and finally, let there be liberty to apply by either side.

The decree nisi will issue straight away today. The same will be made absolute within a period of one month from today.

**Dated at Nairobi this 3rd day of April, 2003.**

**JOYCE ALUOCH**

**JUDGE**