



**REPUBLIC OF KENYA**

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

**DIVORCE CAUSE NO. 33 OF 1999**

**S K M ..... PETITIONER**

**VERSUS**

**WW K.....RESPONDENT**

**J U D G E M E N T**

By an amended petition dated 26th May, 2000, the petitioner S K M sought an order to dissolve his marriage to W W K, on the grounds of cruelty, whose particulars were given in paragraph 8 of the amended petition.

The petitioner prayed to be granted access to the only child of the marriage I B K. The amended petition was served as per the court records but no answer was filed. The Registrar thereafter issued a certificate for the cause to be heard as an undefended cause.

The petitioner got married to the respondent on 16th April, 1994, at the Methodist Church in Kariokor in Nairobi. The marriage certificate was annexed to the petition. They were blessed with one child I B K, born in September, 1998. The petitioner is a Manager with the NGO Council, whilst his wife is an advocate of the High Court of Kenya practicing in Nairobi. Both the petitioner and the respondent are domiciled in Kenya and there have been no previous proceedings between them.

The petitioner testified that the respondent left the matrimonial home on 9th October, 1997 and never returned again. She did not give any reason for her departure and she left the 3 year old baby behind but collected him in December, 1997. The petitioner recalled that at the beginning of 1997, he was experiencing some financial difficulties which was known to both of them. It was during that period that the respondent used to refuse to talk to the petitioner, but would talk to other people. The petitioner also complained that the respondent refused to have sexual intercourse with him from May, 1997 upto October, 1997, when she left the matrimonial home. The petitioner went to his wife's office soon after she had left the matrimonial home. This was on 14th October, 1997, but his wife the respondent refused to talk to him and simply walked out on him. He went to see her again a second time, and she did the same thing, i.e. walked out of him leaving him at her office in the company of her court clerk and secretary. The petitioner said that his wife left the matrimonial home in October, 1997 and in November 1998, she gave birth to a baby. He was categorical that that was not his child, and accused his wife of having committed adultery.

His wife's cruelty made him feel rejected, and it undermined him as a husband. It is what cause the breakdown of their marriage. He has not condoned or connived at his wife's act of cruelty. He prayed the court to dissolve his marriage to the respondent and give him access to his son whom the respondent first left behind but collected subsequently.

The petitioner called a witness, one J K, a teacher at **[particulars Withheld]**, and a family friend. K confirmed that the petitioner and respondent were well known to him and when there was a problem between them he intervened to try and reconcile them, but W the respondent put him off by telling him that she would not go back to her husband.

The evidence of the petitioner as well as the particulars of cruelty he testified to, was not challenged

by the respondent who did not file an answer, and also did not come to court on the day of the hearing of the amended petition. I accept the petitioner's evidence as the truth in this cause, and from that evidence I find that it was the respondent's cruelty which caused the break up of the marriage. I therefore make an order dissolving the marriage between the petitioner and respondent. I order further that each party will pay their own expenses occasioned by these proceedings and further still, I order that the petitioner do have access to the only child of the marriage, one I B M K. I direct the advocates to assist the parties to arrange access. The matter can only be brought back to me if the advocates are unable to arrange access.

The decree nisi to issue straight away in favour of the petitioner.

**Dated at Nairobi this 7th day of February, 2002.**

**JOYCE ALUOCH**

**HIGH COURT JUDGE**