



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MOMBASA**  
**DIVORCE CAUSE NO. 37 OF 2001**

**M.W.M.....PETITIONER**

**- VERSUS -**

**P.M.M.....RESPONDENT**

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

**The Petitioner married the Respondent under African Customary law in 1982 and later formalized the same at the Kiembeni Catholic Church on 18th December, 1993. They were blessed with two issues namely:-**

**F.M aged 18 1/2 years**

**L.N aged 12 years.**

**After the celebration of their marriage they resided at Kiembeni Estate until last year in November. The Petition was served upon the Respondent who entered appearance and was represented during the hearing by Kiarie Kariuki. He however did not file any defence and did not attend court for the hearing.**

**The Petition is brought on two grounds that is, on excessive consumption of alcohol leading to cruelty and extra marital affairs. The Petitioner says the Respondent is a chronic drunkard and it has been difficult even to discuss any family affairs as the respondent is quarrelsome, abusive and when he chooses does not talk to her. She infact says the Respondent did not speak to her for most part of the year 2001, and that he asked her to leave the matrimonial home after midnight sometimes in November 2001. When she refused to go, he threatened to set her ablaze and went ahead to light a Towel next to the bed. She put off the fire and tried to subdue him as he was at the time breaking everything in the Sitting Room. At that stage, he went ahead and set the clothes she wore ablaze. At this point she screamed and neighbours came to her aid and as he was being lead away he threatened to return with paraffin which he could use to set her ablaze.**

**The Respondent moved out of the matrimonial home on the next day.**

**On the ground of extra marital affairs, the Petitioner stated that the Respondent has on several occasions admitted to her that he had affairs with certain women and that he had told her that his girl friends are not her area of concern.**

**Before the start of the hearing, the Counsels did enter into a consent on the issue of custody of L.N aged 12 years. She is to remain in her mother's custody with visitation rights to the Respondent during half the Easter and the whole of August school holidays.**

**On maintenance, there was a further consent order that the Respondent shall pay the Petitioner a sum of Kshs.10,000/= per month starting the 1st March, 2002 excluding the school fees which the Respondent shall continue to pay. However the issue of school fees in respect of their first child, F.M was deferred to the date of this judgement as the parties were to hold further discussions.**

**From the Petitioner's evidence, which has gone unchallenged, it is clear she has endured a lot of suffering and nearly suffered serious injuries had Respondent succeeded in burning her without interference. This is a case of a marriage gone wrong and there is actual danger to life should they continue to stay together. It is with these facts in mind that I allow the Petition for a Divorce. I further grant the Petitioner the costs of the Petition. A Decree Nisi shall issue and made absolute as provided for in law.**

**The court would however wish to caution the Respondent against issuing and/or carrying out his threats on the Petitioner's life. The Petitioner is hereby advise to ensure the matter is reported to the police.**

**Dated and Delivered at Mombasa this 15th day of March, 2002.**

**P.M. TUTUI**

**COMMISSIONER OF ASSIZE**