

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI
DIVORCE CAUSE NO. 212 OF 2000

E M M PETITIONER

VERSUS

M W M RESPONDENT

J U D G E M E N T

E M M petitioned this court for an order to dissolve her marriage to her husband M W M, on the grounds of cruelty, in the form of neglect and drunkenness whose particulars were given in para 8 of the petition.

The respondent was served with the petition, but he did not respond, causing the Registrar to certify the cause undefended at the application of the petitioner.

The couple got married on 14th April, 1994 at St. Paul's Chapel University of Nairobi. They lived and cohabited as shown in para 2 of the petition and had two children as shown in para 3 of the petition. Their birth certificates were attached.

Both the petitioner and respondent work for gain as shown in para 4 of the petition, and they are both domiciled in Kenya.

The petitioner complained that the marriage had problems right from the beginning. That the respondent started drinking and coming home late.

She recalled August 1996, when the respondent kicked her until she lost a tooth. This was at night when he came home drunk.

She again recalled the 9th September, 1999 when the respondent threw her out together with the children. This was at about 3.00 a.m. Again he was very drunk when he did this.

The petitioner also complained of lack of financial support from the respondent who used to say that he had no money.

The parents of both the petitioner and respondent tried to intervene to help the couple resolve their difference, but this did not work.

The petitioner never went back to resume cohabitation with the respondent but last year, 2001, he sent his brother with some money, Kshs.5,000/= to give the petitioner for the children's shopping. The petitioner telephoned and thanked him for the money, otherwise she said that the respondent has lost interest in her and the children and even when the petition was filed, he did not file any reply and also did not appear in court to defend it.

The petitioner prayed for the dissolution of marriage, custody of the children and costs of the petition.

As the petitioner did not enter appearance or file an answer to the petition, I find that the facts contained in her affidavit are not contested, and I accept them as the true version of evidence in this Divorce petition. I believe the petitioner's evidence and from it find that the marriage between the petitioner and the respondent has broken down due to the respondent's cruelty.

I therefore grant an order of divorce to resolve the marriage between the petitioner and respondent. I grant custody of the children of the marriage to the petitioner, and also award costs of the petition to the petitioner.

Dated at Nairobi this 27th day of June, 2002.

JOYCE ALUOCH

HIGH COURT JUDGE