



**REPUBLIC OF KENYA**

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

**DIVORCE CAUSE NO. 48 OF 2001**

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

**VERSUS**

**R N M ..... RESPONDENT**

**JUDGMENT**

This is a petition dated 9th March 2001 filed by the Petitioner N W M against the Respondent R N M praying that their marriage be dissolved, that the Petitioner be granted custody of the three children of the marriage; that there be a permanent injunction restraining the Respondent from molesting, threatening, beating, harassing and assaulting the Applicant. The petition is based on the ground of cruelty and adultery.

The Respondent in his answer to petition together with his cross petition dated 6th April 2001 does not admit that he committed the act of cruelty and the act of adultery. He prays that the petition be dismissed and that there be restitution of conjugal rights to him and custody of the children be given to him.

Though filed on 9th March 2001, this is a case where neither the Petitioner nor the Respondent was able to make up her or his mind to ask for dissolution of the marriage until the hearing day on 23rd May 2002 when the Petitioner, in court before me, amended payer number one in her petition to ask that the marriage be dissolved.

I have carefully considered the evidence adduced in light of the pleadings filed to prove and disprove the grounds of cruelty and adultery. With due respect, I am not satisfied that sufficient evidence has been adduced to prove the ground of cruelty or the ground of adultery to the standard that would warrant dissolution of a marriage under the Matrimonial Causes Act.

The Respondent gave me the impression that he is a truthful man and I am not convinced that the marriage between the two spouses has irretrievably broken down to the point where it cannot be salvaged.

From what I am saying therefore, the Petitioner's petition be and is hereby dismissed in its entirety. The Respondent's cross petition succeeds in terms of prayer (a) as to dismissal of the petitioner's petition and prayer (b) restitution of conjugal rights to the Respondent.

There will be no order as to custody of the children of the marriage and each party will bear its own costs of these proceedings. Dated this 14th day of June 2002.

**J. M. KHAMONI**

**JUDGE**