



**REPUBLIC OF KENYA**

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

**DIVORCE CAUSE NO. 156 OF 1999**

**P.N.M ..... PETITIONER**

**VERSUS**

**J.W.N..... RESPONDENT**

**JUDGMENT**

In this matter the Petitioner who married the Respondent under customary law in 1985 and subsequently converted that marriage to a Christian Marriage under the Marriage Act on 5th August 1989 has petitioned for divorce and custody of the only child of the marriage relying on the ground of cruelty.

The Respondent has cross-petitioned for divorce also relying on the ground of cruelty. In the cross petition she also prays for custody of their child and maintenance. During the hearing however; she has told the court she does not want custody of the child but wants maintenance.

Evidence is that it was the petitioner who, sometime in 1994, decided on his own to leave the Respondent on the matrimonial home built at the petitioner's farm in Nyandarua and that since then, the two have never lived together again as husband and wife.

Subsequently the Respondent went to leave with her mother and now lives with her sister at Gachie in Nairobi having had a second child with a boyfriend after the separation with her husband.

However, the petitioner's petition does not talk of the ground of adultery and the Respondent's cross-petition does not talk of the ground of desertion just as the petitioner's petition does not.

I have carefully considered what was brought to my attention during the hearing and it is my humble opinion that while the Respondent, on the balance of probabilities, has succeeded in proving the ground of cruelty against the petitioner, the petitioner has failed to do the same against the Respondent. The evidence is on record.

It follows, therefore, that the petitioner's petition herein be and is hereby dismissed in terms of prayer (a) relating to dissolution of the marriage. The same petition however, be and is hereby allowed in terms of prayer (b) relating to custody of Robert Muriithi the only issue of the marriage.

The Respondent's cross petition be and is hereby granted in terms of prayer (b) as to the dissolution of the marriage, excluding costs. The marriage to be dissolved and a decree nisi be issued; not to be made absolute until after the expiration of six months.

Prayer © in the Respondent's cross petition relating to custody, care and control of the child, R.M, is hereby, marked withdrawn and since the petitioner is good enough to recognize that the Respondent, as the mother of R.M, deserves maintenance from the petitioner, prayer (d) in the Respondent's cross petition with regard to maintenance be and is hereby granted subject to an agreement by the parties as to how much should be paid and as to the mode of payment provided that such maintenance will continue only as long as the Respondent remains unmarried.

With regard to prayer © in the petitioner's petition as is with prayer (e) in the Respondent's cross petition, each party to bear its own costs of the petition and cross petition.

Further, there be a mention on ----- for the court to record the agreed amount of the maintenance to be paid by the Petitioner to the

Respondent and the mode of payment.

Dated this 23rd day of July 2002.

**J.M. KHAMONI**  
**JUDGE**