



**REPUBLIC OF KENYA**

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

**DIVORCE CAUSE NO. 4 OF 2002**

**A.W.H ..... PETITIONER**

**VERSUS**

**F.N.G..... RESPONDENT**

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

The petitioner **A.W.H** sought an order to dissolve her marriage to the respondent, **F.N.G**, on grounds of cruelty suffered at the hands of her husband.

The couple got married on 18th November, 1980, at the Registrar's office in Nakuru and lived in Nakuru for one year. During that period of one year, the respondent used to drink heavily and come home late, or at times, not come home at all for 2 or 3 days continuously.

The respondent left the matrimonial home after one year in 1981, by then, the couple had already had the first-born child, because the petitioner got married when she was pregnant.

The petitioner could not continue to pay rent in the rented house where the respondent left her, so she went back to Gatundu hospital where she used to work before marriage. There she was given her job back and she was also provided with a house. The respondent got to know this, and started visiting her, and eventually, the 2 resumed cohabitation for about 2 years. It was during that period that the second child, a daughter was born in 1982. This time the couple lived together for 2 years.

The respondent did not change his behaviour. He continued to drink and came home late or not at all and in 1983, he again moved out of the matrimonial home for the second time.

He however started coming on and off to visit. During one such visit, he beat up the petitioner so badly that she was forced to go to court and seek a legal separation order which she got on 19th June, 1985, from a Resident Magistrate in RM's Sheria House Court, in Nairobi.

Since then the 2 have never resumed cohabitation. The petitioner lamented that she has had to bring up the 2 children by herself, as the respondent never gave her any financial support, whatsoever.

She recalled that sometime in 1997, she saw the respondent in church at a funeral service of a man who was a friend to both of them. She was with the children. She talked to the respondent after the service. The children too, had a chance to talk to him and after that the first born child, a boy, developed contact with the respondent, and started seeing him regularly, though living with his mother the petitioner. It was this child who pointed out the respondent's house in Ongata Rongai, in order for him to be served with court papers.

The respondent did not, however, enter appearance or file an answer. The cause was certified undefended by the Registrar.

From the petitioner's evidence, I am satisfied that the respondent was cruel to her. He absented himself from home so many times, and also drank heavily, and provided no financial or any other support to his family. I also find that on 2 different occasions, he willfully deserted his family.

I am satisfied that the petitioner has proved her case on a balance of probabilities. I therefore proceed

to grant an order to dissolve her marriage to the respondent. I order the respondent to pay the costs occasioned by these proceedings.

Finally, I direct that a decree nisi do issue today, and the same to be made absolute within a period of one month from today.

Dated at Nairobi this 31st day of October, 2002.

**JOYCE ALUOCH**

**HIGH COURT JUDGE**