



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI (MILIMANI LAW COURTS)**  
**DIVORCE CAUSE 41 OF 00**  
**E.A.L .....PETITIONER**  
**VERSUS**  
**D.C.L .....RESPONDENT**

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

By a Divorce petition filed in court on 9th March, 2000, the petitioner E.A.L, petitioned the court to dissolve her marriage to the Respondent D.C.L on the grounds of cruelty and desertion.

The respondent filed an answer on 17th January, 2001, which answer was subsequently amended, vide amended answer to petition, filed on 3rd May, 2001, the respondent denied the respondent's "charges" against her, and instead "accused" the petitioner of "adultery" and "cruelty". The respondent prayed that the petitioner's petition be dismissed with costs.

In court during the hearing of the petition, the petitioner **E.A.L** said that he got married to **D.C.L** on 17th December, 1966 at All Saints Cathedral in Nairobi. He produced a marriage certificate, whose copy was attached to the petition anyway.

According to the petitioner, they were happy initially after marriage and they had 3 children, whose details appear in para 3 of the petition. The couple lived and cohabited as appears in para 2 of the petition.

The petitioner said that the marriage started to go sour, in 1999, after the birth of the twins, G and W, born on 30th September, 1999.

That his wife, "took to very heavy drinking of alcohol, and her performance of domestic duties started to decline, and she started to come home drunk under the influence of alcohol...."

The respondent's drinking habit made her unable to perform her responsibilities forcing the petitioner to take over such responsibilities as shopping for the family and cooking because there was only one house help.

The petitioner had to hire the second house help, in order to manage the domestic chores. He added,

"This whole atmosphere was so cruel that it put tremendous stress on me, and ultimately I developed hypertension..."

The couple continued to live together as the petitioner tried to help his wife to overcome the problem. He even consulted a Doctor, Muiya, a psychiatrist from Kenyatta National Hospital who told him that there was nothing wrong with his wife, and “she just had to master sufficient will power to stop the habit”.

The petitioner also consulted two of his brothers in law who were then very senior civil servants in the Kenya Government.

The 2 undertook to live with the respondent and counsel her, whom they did for a while, but eventually they both sent her back to him telling him to deal with the problem, as the respondent was his wife. The petitioner testified further that in August 1978, the respondent disappeared from the house, and has never returned. She left the children behind. The petitioner lamented that his wife’s drinking exhausted all her funds, so as such, she was not able to make any contribution in the house, so he single handedly educated the children from primary schools to universities overseas. The daughter went to a University in USA, whilst the 2 boys went to Punjab University in India.

The petitioner prayed the court to dissolve his marriage to respondent, and added,

“I have not condoned or connived at the respondent’s act of desertion and cruelty. I think the marriage has broken down. It is not possible to try and salvage it. I have not presented this petition in collusion with the respondent”.

To several questions put to him, the petitioner explained the various posts and positions held by wife during the period 1969 – 1978, when her drinking problem was very bad. He denied having been violent to his wife, whom he said had become a “habitual drunkard”, but nevertheless was held in high esteem by people who did not know about her drinking problem. That eventually she lost her job as a result of the drinking problem.

The petitioner admitted that he started living with another woman in 1981 – because his wife refused to return home, and due to the responsibilities he had to carry alone in the house, he developed high blood pressure. He denied the suggestion that he wants to divorce the respondent in order to legalize his relationship with the woman he is living with.

The respondent, **D.C.L**, testified that she left the matrimonial house in 1978 after experiencing a lot of cruelty from her husband, the petitioner who used to bring female friends to sleep at home and would threaten her saying that the house was his and he wanted her out, otherwise he would kill her.

The respondent testified further that she was thrown out of the matrimonial bed to sleep in the guest room, and she objected to this, she recalled one day when the her husband pulled her out of the guest room and pushed her downstairs from the first floor, took her out of the house forcefully and warned her not to get back into the house. The respondent stated that that is when she left the matrimonial home to save her life because she had had many threats from her husband.

The respondent gave a detailed account of the jobs and positions she held, ranging from being the Deputy Director of [PARTICULARS WITHHELD], to the position of Director, and again being the Secretary General of an International body, which has consultative status with the U.N.

This position made the respondent travel a lot within Africa and overseas and according to her assessment, her husband was not happy. She was also Chairman of [PARTICULARS WITHHELD ], and one of the dormitories was named after her. She even went overseas to raise funds for the building of that dormitory.

Continuing with her evidence the respondent said,

“To say that I am an alcoholic is an alcoholic is an exaggeration. I could not carry out all these duties both in Kenya and overseas, if I was such a person.....”.

The respondent said that she gave her husband the best care a wife could give, and he was ‘extremely healthy’ for the period they lived together. That she put up with the husband’s relatives who lived with them including his son born out of wedlock. She said further that she even operated a joint account, with her husband, “a realization that responsibilities had to be shared”.

The respondent was involved in a motor accident. She, however, denied that this was due to the fact that she was drunk. She recalled that by 1978, the relationship between her and her husband was very bad because he continued to bring women friends at home and slept with them on her bed. If she protested, she was beaten. She described her husband as being an expert in “verbal abuses and physical violence”.

The respondent denied having abandoned her responsibilities in the house and said,

“I pray that this petition be dismissed. The reasons for leaving home were caused by my husband. I did not desert my husband. I had to save my life”.

The respondent also asked for costs of the suit and maintenance, as she currently lives in Nandi, the home of her parents, as she tries to develop an educational institute in memory of her parents. Part of that project a nursery school is already operational.

Several questions were put to her during cross examination, to which she answered, inter alia, that she only drank alcohol, if she was with her husband, and did not drink prior to her marriage to the petitioner. She denied ever having been registered with alcoholic anonymous? The respondent left the matrimonial home in 1978 as her life was in danger, but she did not report this to anybody. She respected her husband and hoped that he would change.

Still on the issue of drinking she said, “The drinking I did at parties was not excessive what my husband is saying is not true. I did not have an alcoholic problem”. Though the respondent alleged adultery on the part on her husband. She did not name any women. She also conceded that she did not report any cruel acts to the police, and also did not give specific dates when the petitioner beat her up.

The respondent denied having been the cause of the breakdown of the marriage between her and her husband. She does not accept these divorce proceedings filed by her husband. She wants the 2 of them to continue to live separately as they have been doing since 1978. She said that a divorce would not help as it would alienate them. The respondent has filed an originating summons, praying for the division of matrimonial property. She wants that case to continue, even if she wins this divorce cause by having it dismissed. She hopes to get paid something out of that case.

The advocates representing the parties herein made oral submissions in court, at the conclusion of the “viva voce” evidence by the petitioner and respondent. These are on the court record.

I have considered the pleadings filed by the parties herein. I have also considered the oral evidence adduced by the parties, as well as the oral submissions by the advocates.

What I have in this divorce cause, however, is evidence of one party against the other, as none of them called any witnesses.

That notwithstanding there are some facts which are not in dispute. These are, the date when the couple got married, the number of children they had and the date the respondent left the matrimonial home.

Evidence pertaining to the beginning part of their marriage, which was said to have been a happy one, was also not seriously in dispute.

The petitioner has prayed for an order of divorce, but the respondent has instead asked the court to dismiss the petitioner’s case because she does not want to be divorced. The couple ceased to cohabit as husband and wife in 1978, and according to the respondent she would like the situation to continue as it is, because divorce would alienate them.

I did not quite understand the logic of this argument by the respondent because as it is, the two have not cohabited for the past 24 years, so the question of the divorce alienating them does not, in my view, make sense, as I consider them already “alienated”, if I may use the respondent’s word.

The petitioner went to great lengths to tell court about his wife’s drunkenness which according to him, made her abandon her duties in the house, squander her money, and even caused her to lose her job.

To this charge the respondent said, “I did not drink before marriage. If I drank, I did so with my husband. We went out together and drank together. I drank v ery little.....”

As I have stated, the evidence of why the respondent left the matrimonial home is not supported by any other evidence yet after leaving apart from her husband for 24 years, the respondent opposes the divorce saying that she wants things to remain as they are. This would in my view, amount to having one’s cake and eating it at the same time. The respondent did not accept being a drunkard, but conceded that she “drank very little”, whatever that means. The petitioner hinged his case on desertion, on the part of his wife the respondent as he is still living in the same matrimonial house. In the absence of corroboration of the evidence of the respondent to the effect that it was the petitioner who was in “constructive desertion” by being cruel, I find that it is the long absence of the respondent from the matrimonial house, a period amounting to 24 years, which has caused the breakdown of the marriage, and even caused the petitioner to seek comfort in the arms of another woman, with whom he has a child.

Though the respondent wants the “status quo” to continue I think it would be both morally and legally wrong to allow a marriage to exist merely on a piece of paper and not infact. I am satisfied that the petitioner has proved on a balance of probabilities, that his wife deserted the matrimonial house in 1978 to date. I therefore grant an order dissolving the marriage between **E.A.L** and **D.C.L** on 17th December, 17th December, 1966, at the All Saints Cathedral Church in Nairobi.

I have not made any order for maintenance in favour of the respondent because her amended answer to the petition dated 2nd May, 2001, only prays for the dismissal of the petitioner’s Divorce Petition, but does not pray for maintenance.

Because of the nature of the dispute herein, I have decided that each party should bear their own expenses. Finally, I direct that a decree nisi should issue today, and the same will be made absolute within a period of one month from today.

**Dated at Nairobi this 17th October, 2002.**

**JOYCE ALUOCH**

**HIGH COURT JUDGE**