



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MOMBASA**

**DIVORCE CAUSE NO. 37 OF 2000**

**T K C..... PETITIONER**

**- VERSUS -**

**A M N ..... RESPONDENT**

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

The Petitioner married the Respondent on 10th September, 1993 at the Registrar of marriages office at Mombasa. Since the said marriage they cohabited at Mtwapa, Mombasa and later at Nairobi. The marriage was blessed with one issue I C aged 6 years at the time of this petition.

The Petitioner prays for a dissolution of the marriage on grounds of cruelty while the Respondent filed a Defence and cross-petition on the grounds of adultery. The Petitioner says since they moved to Nairobi in 1997 the Respondent changed and became very cruel to the Petitioner. She never seemed to appreciate anything he did for the family and constantly complained about money and would turn violent anytime Petitioner went home late which he says was rare.

On her part, the Respondent says the Petitioner never used to provide enough for food and came late and committed adultery. However no details of the adultery or a Co-Respondent are given. From the 11.5.99 the Respondent left home with the child and all household goods. However 2 weeks later she asked the petitioner to meet her at the Railways Station and when he went, she handed over the child to him. He has lived with the child since then. The Petitioner says he is comfortable and so is the child while the Respondent says she is happy with that kind of arrangement. The Respondent further prayed for alimony but petitioner says she is young and capable of taking care of herself. From her evidence, she stated she has held 2 jobs since she left the matrimonial home and currently is engaged in the selling of second hand clothes and is able to pay for her rent of Kshs.2,000/= per month and for her food. I have considered all the points raised and there is no doubt the marriage has broken down irretrievably. The couple has been apart since May, 1999 and no attempts of reconciliation have been made by either.

On the issue of the child, the Respondent is comfortable and wants the custody to remain in the hands of the Petitioner. On alimony I am inclined to agree with the Petitioner that the Respondent is young and capable of taking care of herself. She did not tender evidence to show how much she claims and that the Petitioner is in a position to provide the same. He however did on cross-examination by the court say he earns Kshs.41,000/= per month. There is no doubt while the marriage lasted, the couple had it's good times and are blessed with one son. The Respondent cannot have any more children and says her chances of getting re-married are very slim since she had undergone a tubal ligation as a form of family planning between the couple. This in my view was a great sacrifice.

For the reasons given, I will declare the marriage dissolved and a Decree Nisi to issue and made absolute as by law required. The custody of child is to the Petitioner. The Petitioner will pay the Respondent a lumpsum of Kshs.25,000/= to help her start of within a period of 60 days from today's date. Each party shall however bare its own costs.

**Dated and delivered at Mombasa this 23rd day of November, 2001.**

**P.M. TUTUI**

**COMMISSIONER OF ASSIZE**