



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**FAMILY DIVISION**  
**DIVORCE CAUSE NO. 31 OF 2011**

**C Y C.....PETITIONER**

**VERSUS**

**K S Y.....RESPONDENT**

**JUDGEMENT**

1. A civil marriage was celebrated between the parties herein on 9<sup>th</sup> May 1994 in South Korea. A copy of the marriage certificate issued to them and its translation are attached to the petition. The parties cohabited thereafter in South Korea and thereafter in Nairobi, Kenya. The couple was blessed with issue, two sons – Il G C, born on 27<sup>th</sup> April 1995, and C W C, born on 16<sup>th</sup> April; 1997.

2. It is pleaded that since the celebration of the marriage the respondent has treated the petitioner with cruelty. It is averred that the respondent moved out of the matrimonial bedroom and in the process denied the petitioner his conjugal rights, has treated the petitioner's mother with contempt and continuously employed vulgar and obscene language towards her, has been cruel to members of the petitioner's family and his friends and refuses to have them visit and would routinely abuse them, she is a habitual drunkard and a person of ungovernable temper making it very hard to live with, insulting the petitioner in public and often in front of the children of the marriage his friends and colleagues, failed to provide love care comfort and companionship to the petitioner and the children of the marriage, and has ceaselessly nagged the petitioner on unfounded allegations of adultery.

3. The petitioner pleads that on account of the cruelty pleaded the marriage between the parties has irretrievably broken down and there are no chances of reconciliation whatsoever. The petitioner seeks dissolution of the marriage, confirmation of a postnuptial agreement executed by the parties on 29<sup>th</sup> November 2005, and custody of the children as an alternative and costs of the suit.

4. He pleads that as a consequence of the marital breakdown, the parties entered into a postnuptial agreement on 29<sup>th</sup> November 2005 wherein the petitioner was to pay a sum of Won 300, 000, 000.00 (equivalent to USD 320, 000.00 in consideration of the respondent moving back to South Korea permanently with the children. The payment was to be in full and final settlement of the respondent's maintenance and support. Upon payment of the said settlement the respondent moved to South Korea as agreed, but in contravention of the agreement she came back to Kenya without the petitioner's knowledge.

5. Upon being served, the respondent filed an answer to the petition and a cross-petition on 8<sup>th</sup> March 2012. In the answer, she denies the allegations made against her in the petitioner. She alleges that she did

not leave the matrimonial home in 2005 on her own volition, for she was sent away by the petitioner, saying that it was his cruelty that caused her to leave. She agrees that the marriage has totally broken down, but blames the petitioner's cruelty and adultery for it. She concedes to signing the postnuptial agreement, but alleges that the petitioner failed to abide by its terms, and in any event, she avers, the agreement was illegal and a nullity.

6. In the cross-petition, she seeks dissolution of the marriage, custody of the children, alimony, injunctions directed at the petitioner to restrain him from harassing her, among others. She accuses the petitioner of cruelty. The particulars of the cruelty are physical assaults on her, being locked up in a small room during pregnancy, verbal abuse during pregnancy and often before the children family and visitors, inciting his mother against her, refusing to maintain her, having feats of rage and uncontrollable temper, among others.

7. On 5<sup>th</sup> November 2015, the Deputy Registrar cleared the petition to proceed as a defended cause.

8. The Petitioner testified on 8<sup>th</sup> November 2016. His testimony gave vent to the allegations made in his petition. He confirmed paying to the respondent the amount of money provided for in the postnuptial agreement. He added that the parties have been separated for the last twelve years or so. He mentioned that the children are now adults, and are at university abroad. He stated that he is the one who maintains them there. The respondent did not testify. She had been allocated the 8<sup>th</sup> December 2016 as the date for the hearing of her case, but on the said date she did not attend court. At the conclusion of the oral hearing, counsel for the petitioner made oral submissions on 9<sup>th</sup> March 2017. I have noted the arguments made therein.

9. From the material placed before me it is plain that the marital relationship between the petitioner and the respondent has completely broken down. I am satisfied that the respondent has been cruel to the petitioner. I have noted that cohabitation has been broken, and parties have been apart for over twelve (12) years. The marriage no doubt has practically come to an end.

10. In the circumstances, I am moved to make the following final orders:-

- a. **That the marriage between the petitioner and the respondent, celebrated on 9<sup>th</sup> May 1994 in South Korea, is hereby dissolved;**
- b. **That decree *nisi* shall issue forthwith, to be made absolute after thirty (30) days;**
- c. **That the postnuptial agreement executed by the parties hereto on 29<sup>th</sup> November 2005 is hereby confirmed; and**
- d. **That there shall be no order as to costs.**

**DATED, SIGNED and DELIVERED at NAIROBI this 12<sup>TH</sup> DAY OF MAY, 2017.**

**W. MUSYOKA**

**JUDGE**