



**REPUBLIC OF KENYA**

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

**CIVIL SUIT NO. 39 OF 2016**

**J M K .....PLAINTIFF**

**VERSUS**

**A K K .....DEFENDANT**

**JUDGMENT**

1. The plaintiff has filed a plaint dated 18<sup>th</sup> April 2013 seeking the dissolution of his marriage to the defendant. He got married to the respondent on 27<sup>th</sup> August 1999 under Kamba customary law. The parties cohabited in [particulars withheld] and later moved to Nairobi [particulars withheld]. There are two issues from the said marriage. M M born on 25<sup>th</sup> June 2001 and F K born on 9<sup>th</sup> October 2005. The plaintiff avers that since the celebration of the said marriage the respondent has treated him with extreme willful emotion physical and psychological torture.

2. The plaintiff has claimed that the defendant is of ungoverned temper and has on various occasions during the said marriage physically and verbally assaulted him and this escalated when she tried to poison him causing him severe stomachache and respiratory problems. That the defendant does not show concern to the plaintiff or the children of the marriage. She has bad mouthed him and made false accusations against him in his place of work leading him to get fired and this also caused him immense embarrassment and mental anguish. That she has directed unkind and cruel insults calculated to strip and undermine the plaintiff's self-worth. That the defendant locked out the plaintiff from the matrimonial home forcing him to look for alternative accommodation. That from 2003 the defendant exhibited amours behavior of coming home without giving any plausible explanation on her whereabouts and later on withdrew conjugal rights from the plaintiff.

3. The plaintiff avers that the defendant neglected the matrimonial home and the children of the marriage without any concern for their welfare and also failed to give the plaintiff and the children the necessary companionship and moved out of the matrimonial home. She never visited the children either at home or in school.

4. The plaintiff avers that the defendant was adulterous as she got romantically involved with the father of her first child sometime in 2003 despite knowing the adverse effects the same would have on their marriage an act he avers caused him immense emotional and psychological trauma. That the defendant lied to cover up her extra marital affairs. That during their marriage the defendant exchanged romantic messages with other men and was on various occasions picked and dropped from her work place by different men who dropped her later in the afternoon and could disappear from the matrimonial home only to lie that she was from visiting her family. That the defendant's callous behavior has caused the plaintiff immense grief, pain and emotional trauma forcing him to move out of the matrimonial home sometime in 2012.

5. The plaintiff avers that for the aforementioned reasons the said marriage has irretrievably broken down and urges the court to dissolve the customary marriage celebrated in December 1999 and that he be granted the physical legal custody of the two children of the marriage and that the defendant be ordered to share responsibility of the two issues of the marriage.

6. The defendant denies all allegations alleged in the plaint and raises a cross-petition in which she avers cruelty as against the plaintiff that it is the plaintiff who was assaulting and causing her bodily harm matters she had report in Kasarani Police station and Ngomongo Police post vide OB No. 6/12/2/2012, OB

9/10/3/2012, OB 55/12/4/2012, 69/21/11/2012 adding that the plaintiff used to threaten her with a gun instances she reported at the police stations. She avers that the plaintiff was the verbally abusive one and would assault her even in public when she tries to visit the children of the marriage in school or where they live. She denies allegations of neglect claiming that in her attempts to visit the children the plaintiff would come and beat her up. She denies the allegations of adultery and puts the plaintiff to strict proof thereof.

7. The matter came for hearing on 23/03/2017. Only the plaintiff testified. He sought to rely on his plaint. His evidence was not challenged. He stated that he and the defendant are no longer cohabiting adding that he had been given temporary custody by the children's court of the two issues of the marriage M- 16 years and K who is 12.5 years. He avers that the marriage has irretrievably broken down and there are no possibilities of reconciliation. He added that the last time the defendant went to see the children was in 2014.

8. The parties have been way from each other since 2003 when the defendant moved out of the matrimonial home. They both raised issues of cruelty against one another. The defendant in her pleadings has admitted to abandoning the matrimonial home but denies all allegations of cruelty against the plaintiff. The plaintiff narrated incidents of cruelty and adultery during their marriage in his pleadings. Cruelty and adultery are grounds provided for under the Matrimonial Causes Act Cap 152 (now repealed) and the Marriage Act 2014. From the evidence adduced the marriage between the plaintiff and the defendant has irretrievably broken down. He stated that there is no possibility of reconciliation. I therefore dissolve the marriage between the plaintiff and the defendant that was celebrated on or about 27<sup>th</sup> August 1999. The plaintiff opted not to pursue his claim for legal custody of the children and that the defendant shares the parental responsibility with him in respect of the children. A decree *nisi* to be issued and made absolute in 30 days. No orders as to costs. It is so ordered.

**Dated, Signed and delivered this 12<sup>th</sup> Day of May 2017.**

**R. E. OUGO**

**JUDGE**

In the presence of:

**Absent Plaintiff**

**Absent Defendant**

**M /s Charity Court Clerk**