



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

**DIVORCE CAUSE NO. 25 OF 2012**

**BETWEEN**

**H J E J.....PETITIONER**

**AND**

**M W M.....RESPONDENT**

**JUDGEMENT**

1. Marriage was celebrated between the parties herein on 20<sup>th</sup> July 2002 at a civil ceremony held at the Office of the Registrar of Marriages at Nairobi, Kenya. A copy of the marriage certificate serial number *[particulars withheld]* is attached to the petition. The parties cohabited as husband and wife at *[particulars withheld]* , Kajiado North, Ongata Rongai. The marriage was not blessed with issue.
2. The petition in this matter was filed in court on 10<sup>th</sup> February 2012. The petitioner accuses the respondent of cruelty. The particulars of the alleged matrimonial offence are listed in the petition. The petitioner avers that on account of the alleged matrimonial offence the marriage between him and the respondent has irretrievably broken down. He seeks judicial separation from the respondent and costs of the suit.
3. The particulars of cruelty are that the respondent is a person of ungovernable temper rage and violence, who has consistently abused the petitioner. She is said to have severally threatened to kill the petitioner by setting their residence on fire, and in fact attempted twice to set the residence and the petitioner's car on fire on dates pleaded in the petition.
4. The respondent is said to have left the matrimonial home sometime in 2008 when she removed all her belongings from the premises without the consent of the petitioner or any reasonable excuse. It is pleaded that she did so with intent to bring the cohabitation between herself and the petitioner permanently to an end. The cohabitation has not resumed despite efforts at reconciliation by the petitioner.
5. There is no record of an appearance by the respondent, but her advocates did file a notice of appointment on 23<sup>rd</sup> February 2012 and an answer to the petition and a cross-petition on 8<sup>th</sup> May 2013. In the answer, she denies the allegations made against her and puts the petitioner to strict proof. She accuses the petitioner of being the one who is of ungovernable temper who subjected her to constant physical and verbal abuse. She explains that she left the matrimonial home he forcible eviction therefrom by the petitioner, but her belonging are still at the home. She dismisses the allegations of attempted arson as lies contrived to cast her in bad light. She concedes that the

marriage between the two of them has completely broken down and prays for judicial separation and maintenance.

6. The respondent has cross-petitioned for judicial separation on the grounds of cruelty. She has detailed the alleged cruelty. She accuses the petitioner of being excessively emotionally abusive to her, of directing unkind and cruel verbal insults at her, of failing to display love towards her and being emotionally unavailable to her, constantly being violent to her and in fact physically abusing her, forcibly evicting her from the matrimonial home and preventing her from accessing in withholding her monthly allowance without just cause, lying constantly to her so as to mask his wayward behaviour, refusing to discuss issues affecting their relationship and denying her here conjugal rights.
7. The petitioner responded to the cross-petition by filing a reply on 23<sup>rd</sup> July 2015. He reiterates in the reply that the respondent had been cruel to him during the marriage. He states that she deserted the matrimonial home in 2008 taking with her all her personal belonging save what she did not need. He vehemently denies forcefully evicting her. Reiterating that she left of her own accord and went to live with her friend at a named address in Nairobi. He agrees with her that the marriage is irretrievable, but blames her for its breakdown. He denies all the particulars of cruelty set out in the cross-petition. He prays for dissolution of the marriage. He further prays that the properties bought secretly by the respondent using his money be put under restriction awaiting visitation of a matrimonial property cause by him.
8. The petitioner testified on 2<sup>nd</sup> September 2015 and gave vent to the allegations made in his petition. He added that he had no way of enforcing cohabitation with the respondent and he could not possibly chain her in the house. He stated that she moved out while he was away. He further stated that he was in another relationship. The respondent did not testify. Her advocate indicated that in view of the testimony of the petitioner there was no need for her to put the respondent on the witness box.
9. I am satisfied from the recorded evidence that the marriage between the parties hereto has broken down irretrievably. I am satisfied too that there are irreconcilable differences between the parties. The respondent moved out of the matrimonial home and has stayed away to date. I have noted too that the petitioner is in another relationship. He is therefore clearly not interested in the marriage. It is not for the court to force parties to a marriage to live together.
10. It would also appear to me that there has been no collusion between the petitioner and the respondent in the bringing of these proceedings. There is also no evidence that the petitioner has condoned the matrimonial offence alleged in this cause.
11. The petitioner has asked in the reply dated 23<sup>rd</sup> July 2015 for an order that the property bought secretly by the respondent be put under restriction. Although there is an averment in the body of the reply to the effect that she took money from the petitioner and bought plots with it, the plots allegedly bought have not been identified. No evidence was placed before me at the oral hearing to support the above claim. Consequently, there is no basis for the making of the order sought in the reply.
12. On the prayer in the cross-petition for maintenance of the respondent by the petitioner, I do note that the respondent chose not to testify at the trial. No material was therefore placed before me which could form a basis for the making of the order sought.
13. In the end I hereby make the following orders:-
  - a. That I dissolve the marriage celebrated on the 20<sup>th</sup> July 2002 between the petitioner and the respondent;
  - b. That decree *nisi* shall issue forthwith, to be made absolute on application upon expiry of sixty (60) days from date hereof;

c. That each party shall meet their own costs of the suit.

**DATED, SIGNED and DELIVERED at NAIROBI this 5<sup>TH</sup> DAY OF FEBRUARY, 2016.**

**W MUSYOKA**

**JUDGE**

**In the presence of .....advocate for the Petitioner.**

**In the presence of .....advocate for the Respondent.**