



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**MILIMANI LAW COURTS**  
**DIVORCE CAUSE NO 86 OF 2011**

**T J M. ....PETITIONER**

**VERSUS**

**A K M. ....RESPONDENT**

**JUDGMENT**

By this action brought before this Court by way of a petition filed on 26<sup>th</sup> May 2011, T J M., hereafter “the Petitioner”, seeks to have the marriage between him and A K M, hereafter “the Respondent”, dissolved on the ground of cruelty. As per the petition, it is said that the Petitioner and the Respondent solemnized their marriage on 15<sup>th</sup> January 1985 under the Marriage Act Cap 151 (now repealed). This is not disputed by the Respondent who admitted the same in her answer to petition and cross-petition that was filed on 16<sup>th</sup> September 2011. A certified copy of the marriage certificate between the parties is annexed to the further affidavit of the Petitioner that was filed on 16<sup>th</sup> April 2014. It is on this basis this Court can make a finding that there is a valid marriage between the Petitioner and the 1<sup>st</sup> Respondent.

It is common ground that the Petitioner and the Respondent have lived together as husband and wife since the celebration of their marriage in 1985 and that their marriage has been blessed with two (2) children. There is, however, disagreement as to whether the parties are currently living separately, whether the Respondent currently lives in Riruta or Kileleshwa, whether the Petitioner is unemployed as he claimed in his petition, and whether the parties ever acquired any property jointly or whether any property registered in the name of either party was exclusively acquired by that party.

In his petition of 26<sup>th</sup> May 2011, the Petitioner stated that since the celebration of the marriage and during their cohabitation, the Respondent has treated him with a lot of cruelty as a result of which the marriage has irretrievably broken down, and his affection for the Respondent has considerably diminished. He specified that the Respondent threatened to commit suicide on two occasions, one of which was in the presence of the children of the marriage. He also stated that the Respondent was violent and destructive, and cited a case where she threatened to stab him with a kitchen knife and upon being restrained by family members resorted to deflating the tire of their vehicle. Details of emotional abuse suffered by the Petitioner at the hands of the Respondent are also apparent in the petition and they include: i) verbal abuse such as reference to the Petitioner's friends as prostitutes; ii) disrespectful treatment of the Petitioner in the presence of both his family and children, for example by discussing personal matters indiscreetly; iii) intentional nagging late into the night calculated to stress the Petitioner; and iv) contemptuous treatment where the Respondent would patronize him.

The Petitioner stated that he did not condone the cruelty meted towards him by the Respondent, and that this was the main reason why he left the matrimonial home. He stated that while he was patient and persevering even in the face of the cruelty, the Respondent was always distant and disinterested in the marriage. In the Petitioner's estimation, the Respondent's conduct caused unending conflict thereby creating circumstances that he could not reasonably be expected to bear. Given that all his efforts at reconciliation have proved fruitless during the period of the marriage and the fact that the parties have lived separately since June 2007, it was the Petitioner's conclusion in his petition that the marriage has irretrievably broken down.

The petition makes mention of certain properties which the Petitioner claims were jointly acquired by both parties. These include the following:

- i. Three (3) small plots of land jointly purchased at the Respondent's parents home at [**Particulars Withheld**] registered in the Respondent's name.
- ii. A plot in Kitengela.
- iii. Household furniture and furnishings.
- iv. Motor vehicle Registration Number [**Particulars Withheld**], Suzuki jeep.

Despite stating that he contributed substantially towards the acquisition of all the enumerated properties, the Petitioner stated that there was a mutual agreement between the parties to have them with the exception of household furniture and furnishings registered in the name of the Respondent. This notwithstanding and except for the Suzuki jeep registration number [**Particulars Withheld**], the Petitioner ceded interest of all other jointly acquired properties.

The Respondent filed an answer to the petition and cross-petition on 16<sup>th</sup> September 2011 in which she partially admitted the contents of the petition. She categorically denied each and every allegation raised by the Petitioner regarding her alleged cruel, suicidal, violent, destructive, abusive, disrespectful, vindictive, patronizing and neglectful conduct towards the Petitioner. She denied that the Petitioner was unemployed, stating instead that he works for [**Particulars Withheld**] Trading Company based in Nanyuki. The Petitioner's contention that it was the Respondent's cruelty that drove him from the matrimonial home was met with the answer that he deserted the matrimonial home, and the reason for this was to live with another woman in Parklands with whom he has been committing adultery.

Regarding the issue of matrimonial property, it was the Respondent's contention that properties listed in the Petitioner's petition do not constitute matrimonial property as they were exclusively acquired by her long before the parties were married. Also, one of the properties was a gift from the Respondent's relative and therefore could not form part of matrimonial property. The only joint property that the Respondent alluded to was retirement benefits for the parties when they worked for Habitat for Humanity International of US \$ 150,000 that was deposited in their Joint Retirement Benefits Account Plan account in the United States. This amount can only be claimed when either of the parties attains the age of 60 years. The Respondent expressed anxiety that since the documents relating to the said account are in the Petitioner's possession, he plans to withdraw the amount upon reaching the age of 60 years to selfishly use it with his girlfriend.

In her cross-petition, the Respondent accused the Petitioner of committing acts of cruelty, desertion and adultery. She specified in the particulars of cruelty that the Petitioner: once threatened to throw her out of a moving vehicle in the presence of their children; brought the child he had with his girlfriend to the matrimonial home; threatened the Respondent with dire consequences if she did not desist calling his girlfriend, which matter was reported to Kileleshwa police station; and took two children of the marriage to his girlfriend's home. The Respondent also specified in the particulars of adultery that: i) the Petitioner committed adultery with two unknown women in 1987, one of whom was in Nairobi and the other in Kitale; and ii) the Petitioner has been committing adultery with a woman known to her since 1999 resulting in the birth of a child aged 4 years, and the Petitioner currently lives with the said woman in [**Particulars Withheld**].

Subsequently, the Respondent moved this Court by way of a chamber summons filed on 15<sup>th</sup> December

2011 seeking to have the Court compel the Petitioner to pay alimony to her pending the determination of the case. She deposed that while she is a jobless housewife living in abject poverty in a one-roomed house, the Petitioner earns a monthly salary of Ksh 750,000 from his employment at [**Particulars Withheld**] Trading Company. She also stated that the Petitioner has a legal obligation to maintain her in the lifestyle to which she was accustomed, and accordingly prayed that the Petitioner be compelled to pay her Ksh 300,000 per month for maintenance. She further accused the Petitioner of refusing her access to her pension money which was deposited in a joint account.

The Petitioner opposed the Respondent's application for maintenance orders and filed a Replying Affidavit on 19<sup>th</sup> April 2012. He admitted to being employed but denied that he earns a monthly salary of Ksh 750,000; he stated that the correct figure is a gross salary of Ksh 400,000 which after various deductions leaves him with a net salary of Ksh 285,607 on average. He emphatically denied the claim that the Respondent was residing at a time in a one-roomed house with the child of the marriage. He sought to disprove these allegations by producing evidence in the form of cash receipts for rent paid for their son JM and a print-out of M-pesa transactions indicating regular transfer of funds to the Respondent and to their son. In response to this, the Respondent filed a further affidavit on 24<sup>th</sup> May 2012 in which she stated that the figure of Ksh 750,000 was based on what the Petitioner told her verbally, and she subsequently revised her claim for alimony to Ksh 100,000 per month.

The matter was heard before this Court on 19<sup>th</sup> June 2015, and the Petitioner gave oral and evidence reiterating the averments in his petition. He testified that he was lawfully married to the Respondent on 15<sup>th</sup> January 1987, and the marriage had two (2) issues currently aged 24 years and 27 years respectively. He restated that the parties have been living separately and apart since 2007. He also gave evidence concerning the alleged cruelty of the Respondent towards him which he said had caused him mental anguish. He specified that the Respondent was cruel, violent, destructive and suicidal. It was the Petitioner's testimony that his best efforts at reconciliation were futile.

The petitioner gave evidence at the hearing that the parties had matrimonial property which was registered in the name of the Respondent. He also stated that the Suzuki jeep is very old and he cannot sell it and distribute the proceeds from the sale. He informed the Court that the Respondent relocated to the United States in 2012 and currently lives in Arizona. The current status of the children of the marriage was also provided in his testimony; their daughter is a student in Texas and the Petitioner contributes financially towards her education, while their son lives in Arizona where he has been working and intends to go to school in which event the Petitioner promises to support him financially.

From the pleadings and oral evidence of the parties in this case, this Court finds that the following are the issues for determination to which the Court will focus its legal analysis:

- a. Whether the Petitioner or the Respondent or both have adduced sufficient evidence in their respective presentations to warrant the grant by this Court of a divorce;
- b. Whether the Respondent has made a convincing case for this Court to order that the Petitioner pay to her alimony;
- c. If the answer to (b) is in the affirmative, how much should be paid by the Petitioner as alimony and, if applicable, for how long.

The Petitioner and the Respondent solemnized their marriage under the **Marriage Act Cap 150** and thus matters of divorce and maintenance would ordinarily fall under the provisions of the **Matrimonial Causes Act Cap 152**. The **Marriage Act 2014**, however, amended and consolidated into one statute all the existing laws relating to marriage and divorce. While **Section 8(1)** of the **Matrimonial Causes Act Cap 152** outlines the grounds for divorce, the analogous provisions of the **Marriage Act 2014** are more pertinent to the present case because the **Marriage Act 2014** is the latter law that governs matters of marriage and divorce. **Section 98(2)** of the **Marriage Act 2014** further supports the priority of the provisions of the **Marriage Act 2014** over the provisions of any other earlier written law in respect of ongoing matrimonial suits that were commenced under any such earlier law. **Section 98(2)** of the **Marriage Act 2014** provides:

***Proceedings commenced under any written law shall, so far as practicable, be continued in accordance with the provisions of this Act.***

The above approach is accepted in our case law. For instance, in the case of **RAF v SML [2014] e KLR Muriithi J** confirmed the view that:

***The Marriage Act of 2014 (commencing 20<sup>th</sup> May 2014) ... provides under its section 98 (2) that pending proceedings be, so far as practicable, continued in accordance with the provisions of the new Act.***

Accordingly, the relevant provisions of the **Marriage Act 2014** will be instructive in disposing of the matter before this Court. The marriage between the Petitioner and the Respondent is a civil marriage within the meaning of **Section 6(b)** of the **Marriage Act 2014**. Accordingly, the substantive law concerning its dissolution is to be found in **Section 66** of the **Marriage Act 2014** which provides:

1. ***A party to a marriage celebrated under Part IV may not petition the court for the separation of the parties or the dissolution of the marriage unless three years have elapsed since the celebration of the marriage.***
2. ***A party to a marriage celebrated under Part IV may only petition the court for the separation of the parties or the dissolution of the marriage on the following grounds –***
  - a. ***adultery by the other spouse;***
  - b. ***cruelty by the other spouse;***
  - c. ***exceptional depravity by the other spouse;***
  - d. ***desertion by the other spouse for at least three years; or***
  - e. ***the irretrievable breakdown of the marriage.***

On the one hand, the Petitioner in this case seeks to have the marriage between him and the Respondent dissolved on the ground of cruelty. On the other hand, the Respondent denies all the allegations made against her by the Petitioner and has counterclaimed that the Petitioner is guilty of cruelty towards her, adultery with unknown women, and even deserted the matrimonial home so as to commit adultery with his girlfriend with whom the Petitioner has a 4 year old child. The grounds of cruelty, adultery and desertion are all questions of fact which require this Court to evaluate them based on the evidence provided by the parties. The standard of proof in establishing the above grounds of divorce is a preponderance of probability. This point was elaborated by the Court of Appeal in the case of **ALEXANDER KAMWERU v ANNE WANJIRU KAMWERU (2000) eKLR**, where it was stated:

***Certainly cruelty or desertion may be proved by a preponderance of probability, that is to say that the Court ought to be satisfied as to feel sure that the cruelty or desertion, or even adultery (all being matrimonial offences) has been (as the case may be) established.***

The counter-allegations of cruelty raised in the rival pleadings of both parties require proof to convince this Court that the factual circumstances would suggest that the conduct of either the Petitioner or the Respondent caused or threatened to cause actual danger to the other party's life or limb. In the case of **DM v TM (2008) 1 KLR 5** Chesoni J (as he then was) stated that:

***To establish cruelty the complainant must show to the satisfaction of the court: –***

- i. ***misconduct of a grave and weighty nature***
- ii. ***real injury to the complainants health and reasonable apprehension of such injury***
- iii. ***that the injury was caused by misconduct on the part of the Respondent, and***
- iv. ***that on the whole the evidence of the conduct amounted to cruelty in the ordinary sense of that word.***

The establishment by a court of law of the existence of cruelty depends on the circumstances of each case. In the present case, in order to prove the allegation of cruelty on the part of either the Petitioner or the

Respondent, this Court must satisfy itself that there is evidence indicating that one of the parties, without any justifiable cause, deliberately conducted himself in such a manner as to endanger the other party's physical or mental health, or to cause that party anxiety over the imminence of such danger. Both parties stated in their pleadings that the conduct of the other caused them mental anguish and emotional distress. But none of the parties has adduced evidence to support their claims. The Respondent deponed that the Respondent's cruel treatment caused her high blood pressure resulting in her admission to hospital, and also that she had reported the Petitioner's threats of violence to Kileleshwa Police State. However, these allegations are not borne out by the evidence on record.

The counter-allegations made by the parties concerning the other party's alleged cruelty of have not satisfied this Court of their gravity. Allegations of verbal and physical abuse have not been supported by any evidence. There was also no independent evidence by any other person that could satisfactorily support the allegations of either party. There is also little circumstantial evidence from which to infer cruelty on the part of either party. If such circumstances were proved then the Court would have assessed the objective and subjective aspects of such evidence in order to determine whether they establish the allegation of cruelty. In the case of **RAF v SML [2014] e KLR Divorce Cause No 25 of 2011**, Muriithi J observed that:

***The test for cruelty in matrimonial causes is both objective and subjective. A petitioner is required to prove conduct on the part of the respondent that may be construed to be cruel in an objective sense and to a standard of beyond reasonable doubt or, as otherwise put, that the court must feel sure of the commission of the offence ...***

Having considered the evidence adduced before by the parties and on the basis of the above authorities, this Court finds that the allegations of cruelty made by the Petitioner against the Respondent have not been established to its satisfaction. Similarly, the Court finds that the Respondent's counter-allegation of cruelty on the part of the Petitioner has not been proved to the required standard of proof.

The Respondent accused the Petitioner of committing adultery in 1987 with two unknown women and continuously since 1999 with a woman who came to be the Petitioner's girlfriend. She further alleged that the Petitioner deserted their home to live with the said girlfriend. The standard of proof for determining adultery has been In the case of **N v N (2008) 1 KLR 17**, Madan J, as he then was, stated that:

***To prove adultery, it is not necessary to have evidence of the same. Association coupled with opportunity, illicit affection, undue familiarity and guilt attachment are some of the instances which create an inference upon which the court can act. Circumstantial evidence can prove and establish adultery provided the circumstances are relevant, cogent and compelling.***

The facts and circumstances of the present case make it difficult to accept that the Respondent's claim that the Petitioner is guilty of adultery. In particular, the Court record shows no actual evidence of adultery; while there are numerous references to one "J" as the Petitioner's alleged girlfriend with whom the Petitioner has continuously committed adultery with since 1999 and with whom he has a 4 year old child, there is no further details concerning her. She remains a mystery. There is similarly little information or evidence regarding the alleged commission by the Petitioner of adultery in 1987.

Even in the absence of actual evidence, circumstantial evidence can suffice to prove and establish adultery if it is relevant, cogent and compelling. The reason for this was explained in the case of **MEKM v GLM [2015] eKLR** where it was observed that: ***"The culprits do not have to be caught red handed. Illicit affairs are generally not transacted in public."*** The pleadings of the Respondent support the establishment of adultery by the Petitioner on the circumstantial basis that: i) the Petitioner has not denied the existence of J or her 4 year old child; ii) the Respondent left the matrimonial home in 2007 and relocated to [***Particulars Withheld***] where J and her child are said to also live; iii) the close proximity to the said J coupled with opportunity for an affair may provide a basis to infer that he committed adultery with Jennifer. In light of the evidence adduced by the parties and on the basis of the above authorities, this Court is satisfied that the allegation of adultery made by the Respondent against the Petitioner has been established.

As regards the Respondent's allegation that the Petitioner is guilty of desertion, it is important for the Court to satisfy itself that certain factual and circumstantial factors are present to support that claim. As a general rule, there has to be proof that the party at whom the allegation of desertion is leveled voluntarily left the matrimonial home and the party left behind neither provoked nor condoned the desertion. It is common ground that the Petitioner left the matrimonial home in 2007, but his reason for leaving is disputed. While the Respondent deponed that the Petitioner left the matrimonial home to live with a woman with whom he has been committing adultery, the Petitioner alleged that he left the matrimonial home because of the Respondent's cruelty towards him.

The evidence on record is sufficient to support the Respondent's alleged reasons for the Petitioner's departure from the home. There are numerous references by the Respondent to the Petitioner's girlfriend and the allegation that she is living with the Petitioner. While no actual evidence has been adduced to substantiate this, there is circumstantial evidence to suggest that the Respondent may have left the home for his own reasons, but he subsequently began living with the said girlfriend. This has not been denied by the Respondent who chose to avoid the subject throughout the proceedings. The circumstantial evidence in that regard is sufficient to move this Court to make a finding of desertion. In the case of **SCC v MKC [2014] eKLR**, Justice Ngenye-Macharia observed that no more evidence than that the other spouse has already gone to live with another man or woman, as the case may be, is required to prove desertion. This Court therefore finds that the allegation of desertion has been proved on a balance of probabilities.

Despite the fact that this Court has found the grounds of adultery and desertion to be proved on the basis of circumstantial evidence, the pleadings of the parties and the evidence on record makes clear that the relationship is not working out. Both the petition and the answer to petition and cross-petition disclose that irreconcilable differences arose in the relationship between the parties, and this caused them so much grief that they separated. Indeed, the Petitioner and the Respondent have been living separately and apart since 2007, a period of no less than seven (7) years. This prolonged separation is a conclusive indicator that the marriage has irretrievably broken down, and it provides a valid ground for the dissolution of the marriage. **Section 66(6)(d) of the Marriage Act 2014** provides:

***A marriage has irretrievably broken down if –***

- a. ***a spouse commits adultery;***
- b. ***a spouse is cruel to the other spouse or to any children of the marriage;***
- c. ***a spouse willfully neglects the other spouse for at least two years immediately preceding the date of presentation of the petition;***
- d. ***the spouses have been separated for at least two years, whether voluntary or by decree of the court, where it has;***
- e. ***a spouse has deserted the other spouse for at least three years immediately preceding the date of presentation of the petition; ...***

It is therefore the considered finding of this Court that the marriage between the parties has irretrievably broken down, and that it is in both their interest and the interests of justice to dissolve the marriage.

It is now to the matter of maintenance of the Respondent by the Petitioner that this Court now turns its attention. The Respondent has stated that the Petitioner earns a monthly salary of Ksh 750,000 and that he ought to pay her Ksh 300,000 as maintenance in the discharge of his legal obligations. This claim is premised on three (3) primary grounds: i) she is currently unemployed having left the employ of ***[Particulars Withheld]*** in 1995 where she was earning a monthly salary of US \$ 500, and she contributed to a pension scheme jointly with the Petitioner; ii) the petitioner as the husband is legally obligated to maintain her; and iii) she can no longer afford to live in a reasonable residence like the one they used to have as she currently lives in abject poverty, and it is only fair and just that the Petitioner maintain her in the standards equivalent to what she was used to. The above claim is opposed by the Petitioner who stated that his net salary of approximately Ksh 285,607 is less than Ksh 300,000 and therefore cannot sustain the alimony demanded by the Respondent. The Respondent further deponed that her claim for maintenance is founded on the fact that the Respondent has received the pension money which she contributed to and

diverted the funds to build a house for his girlfriend in Kiserian. In light of the Petitioner's disclosure of his salary as Ksh 400,000, the Respondent revised her claim for alimony by scaling it down to Ksh 100,000 per month.

The applicable law concerning spousal maintenance is **Section 77** of the **Marriage Act, 2014** which stipulates the grounds for the claim by a spouse of post-divorce alimony.

***The court may order a person to pay maintenance to a spouse or former spouse –***

- a. ***if the person has refused or neglected to provide for the spouse or former spouse as required by this Act;***
- b. ***if the person has deserted the other spouse or former spouse, for as long as the desertion continues;***
- c. ***during the course of any matrimonial proceedings;***
- d. ***when granting or after granting a decree of separation or divorce; or***
- e. ***if, after making a decree of presumption of death, the spouse or former is found to be alive.***

The objectives of spousal maintenance include, among others, provision of relief to cover the adverse consequences of the dissolution of marriage and to enable the parties achieve economic self-sufficiency within a reasonable duration of time. This indicates that it is necessary to examine the relative financial status of the spouses so as to determine which spouse ought to maintain the other having due regard to their present and future financial capacity. This position is accepted in our case law as illustrated by the observation of Justice Musyoka in **SMR v PHS [2013] e KLR** that: ***“The financial capacity of the parties has to be examined before the court makes a ruling as to whether a spouse should pay maintenance and if so how much.”*** The evidence on record makes clear that the Petitioner has been and still has the higher earning capacity, and it is conceivable that this will remain the position even in the foreseeable future. The Respondent, on the other hand, is currently unemployed having retired in 1995 and at her age of 52 years has little prospect of getting back into formal employment. It is not in dispute that the Petitioner has not been working since 1995, and thus it is reasonable to conclude that the qualifications and set of skills that she relied on in her work are now outmoded.

The expense of acquiring new qualifications and retraining so as to fit the current job market are disproportionate to the returns because at her age she is barely eight (8) years from the age of retirement and would therefore be unlikely to secure employment comparable to what she used to do. Even if it is assumed that after acquiring appropriate qualifications and skills (which will take no less than 4 years) the Petitioner returns to formal employment, this is not of itself a bar to the receipt of spousal maintenance. This position is supported by the case of **SCC v MKC [2014] eKLR** where Justice Ngenye-Macharia held that:

***... alimony or maintenance can be paid where, even if a party is earning, is disadvantaged to meet the fully meet the family needs already placed on her/him before the final divorce is pronounced or upon dissolution of the marriage respectively.***

The particular circumstances of this case make it difficult to arrive at any other conclusion than that it would be just and equitable to award alimony to the Respondent so as to ameliorate the loss of her earning capacity, provide relief for the adverse consequences of the breakdown of the marriage, and improve her chances of attaining self-sufficiency in the longer term.

The Respondent has stated that there is a legal obligation on the Petitioner as the husband to maintain her in the standards to which she was accustomed during the subsistence of the marriage. It is important to clarify that the obligation to pay alimony is not gender-specific. **Section 25(2)** of the **Matrimonial Causes Act** (now repealed) on which the Respondent relied created an obligation on the husband to secure to the wife such gross sum of money for maintenance as the Court may consider reasonable. However, the entry into force of the Constitution of Kenya, 2010 made it imperative that all laws with a discriminatory import be brought into conformity with the foundational values of the Constitution such as equality and non-discrimination. There is authority in case of **K.M. v ATTORNEY GENERAL & T.M.**

**Petition 458 of 2012** for the position that provisions that use the word wife should be read as “spouse” in order to make them gender-neutral. Indeed, even **Section 77(1)** of the **Marriage Act 2014** which outlines the grounds for an order of maintenance refers to a “spouse” or a “former spouse”.

The evidence on record shows that the parties lived together as man and wife in Kileleshwa, Nairobi from 1993 to 2007. In her pleadings, the Respondent suggests that she can no longer afford to pay rent for the house in which the couple lived and hence had to rent a 1-roomed house and change the lifestyle that she was used to during the subsistence of the marriage. The Court record also shows that the Respondent, by her own admission, owns three (3) plots of land in [**Particulars Withheld**], a plot in Kitengela and motor vehicle registration number [**Particulars Withheld**]. A noteworthy point, however, is that it is not in dispute that the plots in question are undeveloped and the motor vehicle is very old and unlikely to fetch much if sold. On the other hand, the Petitioner has not been shown to have any property. While it has been alleged that he has built a house for his girlfriend, this claim has not been substantiated.

It is therefore difficult to accept that the Respondent who has property which can be profitably utilized in the long term should enforce upon the Petitioner the obligation to maintain her at a monthly rate of Ksh 100,000. While it is accepted in principle that spousal maintenance should ensure a resulting standard of living that is close to that enjoyed during the marriage, the Court must ensure that its orders produce a result that is just, fair and equitable. In the case of **WMM v BML [2012] eKLR** Justice GBM Kariuki (as he then was) observed that:

***No spouse who is capable of earning should be allowed to shirk his or her responsibility to support himself or herself or to turn the other spouse into a beast of burden but where a spouse deserves to be paid maintenance in the event of divorce or separation, the law must be enforced to ensure that a deserving spouse enjoys spousal support so as to maintain the standard of life he or she was used to before separation or divorce.***

The critical question that arises in view of the above observation is whether the Respondent deserves spousal maintenance payable by the Petitioner. This Court has carefully considered the facts of this case and the evidence adduced by the parties. Its finding is that in spite of having some property which can yield some income, the Respondent deserves to be supported by the Petitioner at least until she becomes economically self-sufficient. This Court has considered the facts and the circumstances as at the time of filing the petition, but it is aware that there are there have been some changes since that time. The unchallenged testimony of the Petitioner was that the Respondent has relocated to the United States and currently resides in Arizona. This Court finds it reasonable to believe this because the Respondent did not attend the hearing. Hence, while the Respondent would ordinarily be entitled to some spousal support from the Petitioner, at least until she can support herself, this Court finds it difficult to issue such an order because the Respondent is not living in Kenya. The point is not so much that she has left the jurisdiction of this Court and has not participated in the divorce proceedings as it is that the Court has no way of determining her financial needs. This can only be possible after the parties have filed their respective affidavit of means.

In the premises therefore, this Court finds it just and equitable to order that the marriage between the Petitioner and the Respondent that was solemnized on 15<sup>th</sup> January 1985 is hereby dissolved:

- a. Decree nisi to issue forthwith;
- b. Decree absolute to issue thereafter within 30 days;
- c. The Petitioner and the Respondent to file their respective affidavits of means in Court within 60 days to enable the Court dispose of the issue of alimony payable to the Respondent;
- d. The property listed by the Petitioner as constituting matrimonial property but which are registered in the name of the Respondent to remain the sole property of the Respondent. These include:
  - i. Three (3) small plots of land jointly purchased at the Respondent’s parents home at [**Particulars Withheld**].
  - ii. A plot in Kitengela.
  - iii. Household furniture and furnishings.

iv. Motor vehicle Registration Number [*Particulars Withheld*], Suzuki jeep.

e. The Respondent to file in Court the relevant information concerning the existence of a Joint Retirement Benefits Account Plan in the United States as well as her contribution to the same.

f. Any aggrieved party is at liberty to apply;

g. No orders as to costs.

**DATED AT NAIROBI THIS 7<sup>TH</sup> DAY OF JULY 2015**

**M. MUIGAI**

**JUDGE**