



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

DIVORCE CAUSE NO. 2 OF 2013

C K K.....PETITIONER

VERSUS

C M M..... RESPONDENT

JUDGMENT

1. The petitioner married the respondent on the **23rd February, 2008**; a certificate of marriage No. **[particulars withheld]** was issued. They cohabited at **Matuu, Utawala, Kabete** then Athi River in the year **2013**. They were blessed with one child C.M. on the **3rd December, 2009**.
2. The Petitioner now seeks :-
 - i. dissolution of their marriage on grounds of cruelty;
 - ii. legal custody of the children of the marriage and their maintenance;
 - iii. Alimony
 - iv. Costs of the petition
 - v. Any other relief that the court may find just to grant in the circumstances.
3. Having been served with the petition the respondent filed a memorandum of appearance through the firm of **Migos Ogamba & Company**, on the **17th May, 2013**. There is no cross- petition filed. However, thereafter, on the **21st May, 2013** an answer to a cross-petition was filed whereby the petitioner stated that she moved out of the matrimonial home because of violence, non-payment of house rent, water bills, electricity bills and cruelty on the part of the respondent. She denied allegations of desertion.
4. The respondent subsequently instructed another firm of advocates, **Ochanda Onguru and Company**. They filed a notice of a Preliminary of Objection dated **6th day of November, 2013** on the ground that this court has not territorial jurisdiction to try and determine the Cause.
5. An application for certification of the pleadings and proceedings being in order was served upon the respondent. There was no appearance. A certificate thereof was made by the Registrar.
6. At the hearing it was the petitioner's case that having married the respondent under the law a marriage certificate was issued. She stated that the respondent was irresponsible and abusive. He would assault her. He never paid utility bills and did not provide for her and their child. On the **4th July, 2013** he assaulted her. She reported the matter to the police. She was issued with a P3 form which was duly filled by a medical practitioner. She sought custody of the child and stated that she did not want alimony because the respondent could not afford to pay the child's medical bill when admitted in hospital and also school fees.
7. The petitioner called her mother **N S, PW2**, whose evidence corroborated that of the petitioner as to the respondent's cruelty and neglect of the family.
8. At the close of the petitioner's case there was no evidence to controvert evidence adduced. It has

been established that the petitioner married the respondent in the African Inland Church at the Co-operative College in Nairobi Province. This is proof that the marriage was solemnized in Kenya. It has been stated that the petitioner and respondent cohabited in Kenya and at the time of presentation of the petition the petitioner was domiciled in Kenya and so was the respondent. The court therefore has territorial jurisdiction to handle the case.

9. In an endeavor to prove that the respondent was cruel, the petitioner produced a medical examination report (P3). It was evident that on the **4th July, 2013**, the petitioner was injured on her body. A blunt weapon was used to occasion the injury. This was proof of some physical injury having been occasioned upon her body. It was her evidence that the physical attack was repetitive and she also suffered mentally following threatening text messages the respondent continuously sent her. These acts of cruelty in a marriage are grounds of divorce.
10. I am therefore satisfied that as a result of cruelty the marriage between the petitioner and respondent has broken down irretrievably.
11. Evidence was adduced of a birth certificate No. *[particulars withheld]* in respect of **C M** a child born on the **3rd December, 2009** to the petitioner and respondent. This is a case where the respondent did not turn up to seek custody of the child. His lack of interest in the child has been demonstrated by evidence adduced.
12. However, the petitioner has told the court that she instituted a case seeking custody and maintenance of the child at the Nairobi Children's Court. Indeed it is the court with jurisdiction to consider cases of custody and maintenance of children at the first instance. In the premises, I decline to make the orders sought.
13. In the premises, I do grant orders as follows:-
 - i. The marriage solemnized between the petitioner and respondent be and is hereby dissolved.
 - ii. A *decree nisi* shall issue forthwith; to be made absolute after the statutory period of six (6) months.

DATED, SIGNED and DELIVERED at MACHAKOS this 10TH day of JULY, 2014.

L.N. MUTENDE

JUDGE