



**REPUBLIC OF KENYA**

**IN THE HIGH COURT**

**AT ELDORET**

**Divorce Cause 22 of 2009**

**C.J.M ..... PETITIONER**

**=VERSUS=**

**J.S ..... RESPONDENT**

**JUDGMENT**

I have petition dated 4<sup>th</sup> December, 2009, **CJM** (hereinafter “**the petitioner**”) seeks dissolution of her marriage to her husband **JS** (hereinafter “**the respondent**”) on the grounds of desertion, adultery and cruelty. With regard to desertion, the petitioner pleaded that the respondent “**mercilessly**” deserted her in the year 2006 while she was undergoing treatment and has since not resumed cohabitation with the petitioner. With regard to adultery, the petitioner pleaded that following his desertion, the respondent married one **CU** with whom they are blessed with several children. In her particulars of cruelty, the petitioner stated, among other things, that in 2005, the petitioner had a miscarriage and the respondent left her at the mercy of neighbours; that the petitioner had a second miscarriage and the respondent left her permanently when she developed high blood pressure and other complications and that the respondent refused to pay hospital bills.

The petitioner also averred that she did not condone the said desertion, adultery and cruelty.

When the respondent was served with the petition, he filed no answer with the result that when the same came up before me for hearing on 7<sup>th</sup> May, 2012, it proceeded ex-parte. In her oral testimony in Court, the petitioner stated, in the main, as follows. She got married to the respondent on 17<sup>th</sup> December, 2004, at the Uasin Gishu District Commissioner’s office and they were issued with a Certificate of Marriage under the Marriage Act (Cap 150, Laws of Kenya). They lived and cohabited in Ndalat Scheme as she taught in a Primary School in the area. The marriage was happy for two years. However, when she got pregnant, she miscarried in 2005, but the respondent showed no sympathy and instead spread rumours that she had deliberately aborted her pregnancy. He therefore left her at the mercy of neighbours. When she fully recovered, the respondent started visiting her again which visits resulted in a pregnancy which again in 2006 was aborted when she developed complications which included high blood pressure. She was admitted at Moi Teaching and Referral Hospital but the respondent showed no concern for her and even refused to pay hospital bills which were paid by her parents. The respondent then deserted the petitioner for good and has never resumed cohabitation. He even married, one **CJ** with whom they now have several children. The petitioner further testified that she had not condoned the respondent’s desertion, adultery and cruelty.

In those premises, the petitioner sought dissolution of her said marriage to the respondent.

Having considered the evidence adduced before me, I am satisfied that the petitioner has satisfactorily demonstrated the grounds of desertion adultery and cruelty against the respondent. With regard to desertion, it is plain that the respondent deserted the petitioner in 2006 and has since not resumed cohabitation. With regard to adultery, the petitioner's testimony that the respondent has since 2006, been living with one **CJ** with whom they have several children has not been contradicted and with regard to cruelty, I find and hold that the respondent is guilty of misconduct of a grave and weighty nature. The misconduct made the petitioner apprehend real emotional and physical injury. In any event, the respondent did not deny the cruelty demonstrated by the petitioner. The respondent has no interest in the marriage and I find that the same has irretrievably broken down.

In the end, the marriage between the petitioner and the respondent is hereby dissolved. Decree nisi shall issue forthwith and the same shall be made absolute after one month.

The petitioner shall have the costs of the petition.

It is so ordered.

**DATED AND DELIVERED AT ELDROET THIS**

**4<sup>TH</sup> DAY OF JUNE 2012.**

**F. AZANGALALA**  
**JUDGE**  
**4/6/2012**

**Read in the presence of:-**

Mr. Mbeja holding brief for Ms Chumba for the petitioner.

**F. AZANGALALA**  
**JUDGE**  
**4/6/2012**