



JSS ..... PETITIONER

VERSUS

EWN ..... RESPONDENT

### JUDGMENT

By a Petition dated 13<sup>th</sup> October, 2008 and filed in court on 14<sup>th</sup> October, 2008, the Petitioner seeks from the court the following orders-

1. ***That the marriage celebrated between the Petitioner and the Respondent be hereby dissolved.***
2. ***That your Petitioner be granted the care and custody of the child of the marriage, RJS.***
3. ***Any other or further relief as this Honourable Court may deem fit and necessary in the circumstances.***

The main ground upon which the Petition is based is cruelty, both physical and mental. The particulars thereof are set out in paragraph 6 of the Petition and are that-

- (a) ***The Respondent has failed to provide love and care to the Petitioner and the only child of the marriage.***
- (b) ***The Respondent has since April, 2007 failed to render conjugal rights to the Petitioner thereby causing him physical, mental and emotional anguish.***
- (c) ***The Respondent has resorted to habitual drinking and coming home late in a drunken, argumentative and combative state every evening.***
- (d) ***The Respondent has subjected the Petitioner to verbal abuse, insults and derogatory language in the presence of the issue of the marriage and the workers.***
- (e) ***The Respondent has caused untold mental and emotional stress to the Petitioner by frequently disappearing from the matrimonial home, terminating all contact and switching off her mobile phone whenever the Petitioner gets worried and starts calling and looking for her.***
- (f) ***The Respondent has been so cruel to the Petitioner that she has caused the Petitioner to suffer from extreme emotional and mental stress that has led to the Petitioner suffering from severe migraine headaches.***
- (g) ***The Respondent has physically assaulted the Petitioner.***
- (h) ***The Respondent is immature, irresponsible, a person of ungovernable temper and impossible to live with.***

The Respondent filed an answer to the Petition and a Cross-Petition in which she denied the

allegations made in paragraph 6 of the petition. She specifically denied the particulars of cruelty as enumerated in the said paragraph. She also denied that she had moved out of the matrimonial home and lived away since 2007. In answer to the Petitioner's statement that a previous Petition by the Respondent in respect of their marriage was struck out in the Chief Magistrate's Court Cause No. 356 of 2007, the Respondent replied that the said cause was struck out for want of jurisdiction of the Lower Court.

In her cross-petition, the Respondent accused the Petitioner of having treated her with cruelty since the celebration of the marriage. The particulars of cruelty were that-

- (a) The Petitioner is quarrelsome and has an insatiable desire to control and dominate the Respondent.**
- (b) The Petitioner is a man of ungoverned temper and has since the celebration of the marriage been throwing tantrums and resorts to verbal abuses to embarrass the Respondent even in the presence of third parties.**
- (c) In November, 2006 the Petitioner subjected the Respondent to physical beatings and started strangling the Respondent holding her head in the bath tub.**
- (d) Sometime in February, 2007 the Petitioner physically assaulted the Respondent and dragged her along the floor.**
- (e) In March, 2007 the Petitioner physically attacked the Respondent using a butter knife.**
- (f) In April, 2007 the Petitioner forced the Respondent out of the matrimonial home through his cruel mistreatment by making it unbearable to live with him.**
- (g) The Petitioner has occasionally subjected the Respondent to emotional, mental and psychological trauma and stress by trailing and stalking her all over Nairobi while they cohabited together and pestering her on petty grounds and generally being a bother and a sadist.**

It is her case that she was forced out of the matrimonial home in 2007 due to the Petitioner's aforesaid behaviour. She also takes the position that the said marriage has irretrievably broken down and there is no possibility of reconciliation or resumption of cohabitation between the Petitioner and Respondent. She therefore prays for the following orders-

- (a) That the marriage between the Respondent and the Petitioner be dissolved.**
- (b) That the Respondent be granted the custody and care of the child of the marriage, Ricky John Scher.**
- (c) That the Petitioner be condemned to pay costs.**

When this matter came for hearing, the Petitioner attended court but the Respondent did not do so. Mrs. Ondieki appeared for the Petitioner while Mr. Kitheka appeared for the Respondent. The Petitioner told the court that the parties married on 8<sup>th</sup> April, 1998 and produced a copy of the marriage certificate. Two years after marriage, the couple was blessed with an issue of the marriage born on [date withheld]. Subsequently, differences arose in their opinions regarding the expectations as to how they should live as a family. This led to arguments and disagreements which became frequent and extreme. They would not come to any understanding. It also led to the Respondent moving out of the matrimonial home in 2007. Since then, the parties were not able to reconcile and chances are that they will never be able to reconcile under any circumstances. Their marriage is consequently completely and irretrievably broken down and it is not possible for the parties to reconcile or live together.

In cross-examination by Mr. Kitheka, the Petitioner said that the couple did not conspire to file a divorce. At the moment they are not living together and they have not been living together for the last

six (6) years. Further more, the Respondent is living in rented premises and the Petitioner is paying the rent and has been paying it by a standing order. The Petitioner has no problem in continuing to maintain the Respondent by stipends and contributions as she is the mother of his son and he would not like to see her destitute. Otherwise he is 100% sure that they are irreconcilable.

In Re-examination by Mrs. Ondieki, he said that the rent he pays is Kshs. 22,500/= per month and that he pays the Respondent about Kshs. 10,000/= per month.

Arising from the above pleadings and the position by the Petitioner in court, its clear that both spouses are unhappy in this relationship. They both admit that their differences are irreconcilable which leads to mental anguish and mental cruelty to each one of them. They cannot continue to leave amorously, and each one of them blames the other and they both agree that their differences are irreconcilable. In my view, it does not pay to let them continue causing each other unnecessary mental cruelty. It is in the best interests of each of them to pursue his/her own life instead of forcing them to continue living together when they are irreconcilable.

For the above reasons, the court hereby makes the following orders-

1. ***The marriage solemnized at the Registrar's Office, Nairobi between the Petitioner and the Respondent herein on 8<sup>th</sup> April, 1998 be and is hereby dissolved.***
2. ***Decree nisi to issue.***
3. ***Decree nisi to become absolute after two (2) months upon application by either of the parties.***
4. ***By consent of both parties, the care and custody of the child of the marriage, RJS, be granted to the Petitioner with the Respondent having unlimited access to the said child.***
5. ***Each party to bear its own cost of these proceedings.***

**DATED and DELIVERED at NAIROBI this 12<sup>th</sup> day of July, 2012**

**L. NJAGI  
JUDGE**