



MC.....PETITIONER

VERSUS

WA.....RESPONDENT

### JUDGMENT

The Petitioner, MC got married to the Respondent WA on [particulars withheld], 2008 at the District Commissioners' Office [particulars withheld] District, and were issued with a Marriage Certificate No. [...]. She produced true certified copy thereof in court and the same was marked "PEXH 1"

The Petitioner testified that she got married at the age of 19 years when she was a first year Student [particulars withheld] University College studying Education Science, thereat. She also testified that she was also expectant, confused and fearful and was coerced into marrying the Respondent as he had threatened to disown her if she did not get married to him.

After the marriage, the couple did not live together as she was living at the campus hostels.

She later found a rental house outside the campus where she lived alone and the Respondent, who was also a student at [particulars withheld] University would come over to visit.

The Petitioner testified that they were blessed with one issue from the marriage, a son, by the name of [particulars withheld] who was born in April 2009. The baby died on the 5<sup>th</sup> October, 2009 when he was about six(6) months old. The baby's death was caused by Meningitis. At that time she had not yet acquired his Birth Certificate but later acquired his Death Certificate upon his death, which she produced to court and the same was marked as "PEXb2".

The Petitioner testified that their's was not a happy marriage. That three(3) weeks into the marriage the Respondent started mistreating her.

The Petitioner cited several incidences of cruelty and negligence.

When she was about to give birth in April 2009 the Respondent sat the Petitioner down for the whole night and made her write ten (10) full scaps of paper as to why she was bothering him. He then assaulted her with a cooking stick (a mwiko) until the said stick broke.

She did not report the incident to anyone as the Respondent had forbidden her to talk to anyone or to have any visitors. She did not report the incident to her parents as they had never been informed of the existence of the marriage.

That the Respondent never provided for the Petitioner even when she was sick and it was her parents who paid the Hospital Bill. The Receipts were produced into court and marked as "PEXb6".

When the baby passed on, the Petitioner requested to inter the remains at the Respondent's home, but he refused to comply and she was forced to bury the child at her parents' home in LABOS – BOMET.

In the year 2009 she deferred her studies at the University and got re-admission in the year 2010. Upon her return the Respondent threatened the Petitioner that he was going to kill her and that he was not afraid to be jailed for life. She felt threatened and was living in fear and at one time reported the matter to the University Security personnel and an entry was made in their books. The extract was produced into court and marked as **“PEXb3”**. She lived in constant fear of calls and threats of beatings from the Respondent.

The Petitioner states that they parted company with the Respondent when the baby passed on and have not cohabited together ever since.

The Petitioner prays for the dissolution of the marriage on the grounds of cruelty and negligence and states that the Respondent’s conduct has made her devoid of any feelings of love and affection she had towards him.

In conclusion the Petitioner states that she did not condone his behavior nor has she collided with the Respondent in bringing the Petition. The Petitioner also prayed for costs.

The Petition was not contested by the Respondent and although served did not put in an Answer.

After hearing the Petitioner’s evidence the court finds the issues for determination relate to desertion, cruelty and negligence.

The Petition contains grounds for desertion, which this court finds only must fail as the period set down by law for desertion had not arisen or lapsed at the time the Petition was filed.

On the issue of cruelty, the definition of cruelty is defined in the case of **RUSSEL –VS- RUSSEL** as;

**“.....that conduct.....such as to cause danger to the life, limb or health, bodily or mentally or to give rise to a reasonable apprehension of such danger.....”**

The Petitioner testified to several incidents of cruelty, but the one incident that suffices as proof of cruelty, was when the Respondent refused to have the baby’s remains interred at his rural home thereby the Petitioner was forced to inter the same at her parents’ home.

This single incident inflicted pain and misery upon the Petitioner and this act in itself is sufficient proof of cruelty.

From the other incidents narrated in evidence by the Petitioner, the cruel character of the Respondent can be ascertained and the Petitioner had good reasons to be reasonably apprehensive of danger to her life. The Petitioner also produced **“PEXb3”** in support of the report she made to the campus security personnel, when she had been threatened by the Respondent.

The court is satisfied that the Petitioner has established and proved the offence of cruelty.

This court is equally satisfied that the marriage has irretrievably broken down, mainly due to the fact that the Petitioner and Respondent were too young and were not ready for the responsibilities and intricacies that come with marriage.

The Petition for divorce is hereby granted and a Decree-Nisi shall issue forthwith. A Decree Absolute shall issue after the expiry of three (3) months.

On the issue of costs the Petitioner shall bear her own costs of the Petition.

**Dated and delivered at Eldoret this 5<sup>th</sup> day of July 2012.**

**A.MSHILA**  
**JUDGE**

Coram: Before Hon. A Mshila

CC; Andrew

Counsel for the Petitioner- Ngetich holding brief for Kipsei

**A.MSHILA**  
**JUDGE**