



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT MOMBASA**

**Divorce Cause 63 of 2008**

**D.K.M..... PETITIONER**

**-VERSUS-**

**E.G.N.....RESPONDENT**

**JUDGMENT**

*D.K.M* moved the Court by divorce petition, stating that: she on 29<sup>th</sup> June, 2005 lawfully married the respondent at the Registrar's Office, Mombasa; thereafter the petitioner and the respondent cohabited as wife-and-husband, in Mombasa; the marriage had no issue. The petitioner asserts that since 2005, following the wedding between her and the respondent, he has treated her "with physical, mental and emotional cruelty".

Particulars of cruelty are stated as follows:

- (i) *Since 2005 and immediately after the wedding between the petitioner and the respondent, the respondent has fallen into dereliction of duty, abandoning his responsibilities to a certain pastor at a church to which he belongs.*
- (ii) *The respondent, since the marriage, has denied the petitioner consortium and conjugal rights.*
- (iii) *It has become clear since the celebration of the marriage that the couple have fundamental incompatibility which makes it untenable they should continue in marriage.*
- (iv) *The marriage between the petitioner and the respondent has irretrievably broken down.*
- (v) *There is no collusion between the petitioner and the respondent, or with any interested party, in the prosecution of this divorce cause.*

On the foregoing foundations, the petitioner prays that the said marriage between her and the respondent be dissolved; and that the respondent be condemned to pay the costs of this cause.

The petitioner gave evidence on 20<sup>th</sup> August, 2009 and said that, following the marriage between her and the petitioner, by virtue of the Marriage Act (Cap. 150, Laws of Kenya), she and her husband had lived in the home of a clergy-woman, but throughout the period of marriage, they were a troubled couple sharing no peace or love at their abode. She testified that she and her husband had no control over their married life, this matter being kept under the control and direction of the clergy-woman in whose home they were living; the said clergy-woman and her faithfuls held that the petitioner and the respondent were God's servants, and "could not come together as man and wife"; and consequently, the "husband and wife had nothing to share". The petitioner testified that the worship system imposed upon the couple's married life stood in challenge to normal supporting social arrangements that could cushion the marriage against rifts: for instance, the petitioner and the respondent were no longer seeing their parents, and "parents on both sides were complaining". The petitioner said: "The clergymen did not allow us to respond to [our] parents. The man had no initiative in the house; he was directed by the clergymen. The respondent refused to listen to parents, he was only listening to the clergymen."

The petitioner testified that she had left the matrimonial home on 20<sup>th</sup> July, 2008 and had not returned; she went to live with her parents.

On cross-examination, the petitioner said that her husband had been taken in by the Church's claims of authority, to such an extent that he would avoid even his own parents whenever they came along, out of concern for the marital stability of the couple. She said she, the petitioner, was subjected to harangues by her husband whenever she dared communicate with her own mother by telephone.

The respondent gave his evidence on 9<sup>th</sup> September, 2009; and he said he had been engaged as a pastor, while his wife had stayed in the home as a housewife. The two lived together until sometime in July, 2008 when the petitioner deserted. The respondent, in his religious

commitments, had a particular notion of a role for his wife, whom he described as a “prayer warrior”; and he was in shock when she one day used the excuse of accompanying Sunday school children to a funeral gathering, to depart from the matrimonial home; and when the petitioner left, she took away the various house items, save for those which most symbolised the marriage relationship – wedding apparel and symbols.

It was the respondent’s testimony that, as he went out on a search for the petitioner, he got indications that she had not been a faithful wife, because several times she had been found in the company of one “BM”; and when he had called the petitioner’s telephone number, the calls had gone unanswered. As the stand-off continued, and the petitioner could not be traced, the respondent testified, she reasserted her presence in Mombasa by talking ill of the respondent’s Church, which caused some known adherents to leave that Church.

The respondent testified that his marriage to the petitioner had tormented him; he said:

*“She was hitting at my ego and personality. I didn’t understand what she wanted.”*

He went on to say:

*“I don’t want to judge, but her deeds will judge. Whatever she says, let God judge her. I very much would be in agreement – divorce be granted. She may get married to any [other] man she wants. I would be happy if judgment [were] passed today. I leave the Court a free man.”*

From hearing the parties give testimony, I did not form the impression they were involved in a feigned contest, marked by collusion to achieve the end of a divorce decree. I did not also get the impression that either party was condoning the occurrence of a basis for the grant of divorce orders; nor that either had connived at circumstances which would properly lead to the grant of a divorce. What I saw as I heard this case, was a situation in which the social and family context of a marriage had not been supportive of the marital union, and the parties had irretrievably drifted apart, no longer held by the practicalities, the ethos and the sensibilities of married life. In short, this is the typical case of a marriage having irretrievably broken down. It will not be the business of this Court to patch up such a marital relationship, as that could only amount to applying the sanctity of the legal instrument to depreciate the parties’ entitlement to more tolerable ways of life. I consider it part of the policy of the law to serve a social purpose.

Consequently, I hereby grant the *decree nisi* of divorce at the instance of the petitioner. The same may be made absolute by suitable application. Parties shall bear their own respective costs.

*Orders accordingly.*

DATED and DELIVERED at MOMBASA this 7<sup>th</sup> day of October, 2009.

J. B. OJWANG

JUDGE

Coram: Ojwang, J.

Court Clerk: Ibrahim

Petitioner in person

Respondent in person