

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
Divorce Cause 158 of 2008

C M O PETITIONER

VERSUS

J I O RESPONDENT

JUDGMENT

The Respondent did not appear before the court on the day fixed for hearing although he was duly served.

The Petitioner testified after the court directed that the petition be heard ex parte.

The Petitioner's case as per her testimony, is that she married the Respondent on 15th October, 1996 under the provisions of the Marriage Act (Cap 150), but previously they were cohabiting since 1992. They have two children of the marriage i.e.

1. **M A O – born on 3rd November 1992**
2. **J O O born on 14th May, 1994.**

They cohabited at various premises in Nairobi.

The Respondent without any reasonable cause and without knowledge of the Petitioner moved out of the matrimonial home on 29th May, 2004. She tried to talk to him with no avail. She also approached his mother and sister but they only informed her that the Respondent was unwilling to stay with her and their children.

The Respondent also treated the Petitioner with cruelty. He expected her to wait for him at night till he came back which was between 11.00 p.m. to 2.00 a.m. When he was under influence of alcohol he became physically abusive. Despite his good job as a producer with Kenya Broadcasting Corporation, he denied to provide for the family. He was secretive about his income and was not an open communicator. He also does not provide for school fees for their two children who study in Form II and Std. VII respectively. He has further disobeyed the court's order dated 16th March, 2006 of maintenance by paying upto November, 2006.

She confessed that in her view, the marriage is irretrievably broken down without her fault and the Respondent is totally out of their lives. She stated that the acts of negligence and cruelty from the Respondent affected her physically and mentally.

In the end she confirmed that she has not condoned the acts of cruelty and has not prosecuted the petition in collusion with the Respondent.

Her evidence given honestly remained uncontroverted and I do find it credible.

Any marriage has ups and downs but consistent acts of imposition to make her wait everyday till the

late night, the negligence to provide for the family, deserting the family without reasonable cause and acts of physical violence are definitely unusual acts against human nature which are not natural wear and tear of the married life. I am satisfied that as a result of such acts of cruelty the Petitioner was harmed physically and mentally. She has not condoned those acts of cruelty and has not connived at or been accessory thereto.

I am also satisfied that there is absence of collusion between the parties.

In the premise aforesaid, I allow the petition and order that the parties herein can no longer be expected to live together, and live separately by issuance of an order of judicial separation.

Dated and signed at Nairobi this 2nd day of October, 2008.

K. H. RAWAL

JUDGE

2.10.08