



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

**DIVORCE CAUSE NO 103 OF 2001**

**E.M.N.....PETITIONER**

**AND**

**B.E.N.....RESPONDENT**

**JUDGMENT**

On 29th May 2001 E.M.N, a Kenyan citizen, brought this Petition against B.E.N, a Nigerian citizen, for dissolution of their marriage formally solemnized on 20th November 1979.

The Petitioner's statutory marriage to the Respondent was conducted at the office of the Secretary, Enugu Local Government in the Federal Republic of Nigeria under the provisions of the Civil Marriage Act (Laws of Nigeria), and a certificate of marriage number [*Particulars withheld*] was duly issued by the presiding Marriage Officer. Subsequently, the Petitioner and the Respondent cohabitated as man and wife, having already established a matrimonial home in a rented house No 27 Kenyatta Street Uwani – Enugu in Nigeria.

According to the Petitioner, the said marriage was blessed with one child namely M.E.N.N born on 1st June 1983.

The Petitioner seeks for dissolution of the said marriage to the Respondent on ground of cruelty as particularized in paragraphs 7 and 8 of the said Petition. Upon being served with a copy of the Petition and Notice to Appear, the Respondent failed to Enter Appearance or file an Answer within the time prescribed by the relevant Rules. When the Petition came for hearing on 14th October, 2004 the said Respondent was absent and thus the hearing of this Petition proceeded as undefended cause.

I have carefully considered the unchallenged testimony of the Petitioner. I have also scrutinized and inquired into the alleged ground of divorce as contained in the Petition suit. I am satisfied that the Respondent has during the subsistence of the said marriage been persistently cruel to the Petitioner on the basis of the evidence of the Petitioner and stated conduct of the Respondent as outlined in paragraph 7 and 8 of the said Petition. In line with the holding in the case of **GOLLINS VS GOLLINS (1963) 2 ALL ER 966**, I am satisfied that the said conduct commencing from 1987 and constituting persistent neglect, restricted social interaction, denial of conjugal rights for well over one year and threats upon her physical and social well being was intolerable and thus grave and weighty, distressful, embarrassing and emotionally traumatizing to the Petitioner to amount to cruelty. Residing in a foreign country, the said conduct of the Respondent must have indeed been most devastating to the Petitioner as to be apprehensive about her well being. I thus adopt the holding in **Russel Vs Russel (1897) P. 322** where Lopez L.J. said:

***“there must be danger to life, limb or health bodily or mentally or a reasonable apprehension of it, to constitute cruelty.”***

I am thus satisfied that the test in Russell’s case (supra) has been met and that therefore the said marriage of the Petitioner to the Respondent, and who have physically been living apart since the year 1991, has irretrievably broken down on the singular ground of cruelty of the Respondent to the Petitioner as particularly more pleaded in the said Petition.

I am satisfied that there has not been any connivance or condonation on the part of the Petitioner and further that no collusion exists between the Petitioner and the Respondent. Lastly, I am satisfied that the Petition has not been presented or prosecuted in collusion with the Respondent and further that there has not been unreasonable delay in presenting or prosecuting the Petition.

I am satisfied on the basis of the evidence adduced that in accordance with the holding in the case of **Wangari Mathaai Vs Mathaai (1980) KLR 154** the case for the Petitioner has been proved beyond reasonable doubts.

So said Sir Jocelyn Simon President in Mulhouse V. Mulhouse (1966) p39 at p.49;

***“Cruelty is a serious charge to make and the law requires that it should be proved beyond reasonable doubt.”***

The Petitioner has accordingly proved to this court that the misconduct of the Respondent was of grave and weighty nature and that she was under reasonable apprehension of injury to her health, the reason why she had to return to her mother country.

I hereby therefore pronounce a decree of divorce and order that the marriage between the Petitioner and the Respondent be and is hereby dissolved. A decree nisi shall henceforth issue, the same to be made **absolute** upon application. I make no orders as to custody and maintenance because the said child of marriage is now an adult, and further order that each party bears its own costs.

It is so ordered.

**DATED DELIVERED AND SIGNED AT NAIROBI** this 28th day of October, 2004.

**P. J. KAMAU**

**AG. JUDGE**