



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**DIVORCE CAUSE NO. 37 OF 2015**

**BETWEEN**

**M K.....APPLICANT**

**AND**

**B S N .....RESPONDENT**

**JUDGEMENT**

1. The Petitioner then a spinster and the Respondent then a bachelor were married on 28<sup>th</sup> November, 2012 at the Registrar's Office in Nairobi. A certificate of marriage serial Number [Particulars Withheld] was issued to them in accordance with the **Marriage Act (Cap 150 Laws of Kenya)**. The couple thereafter cohabited briefly in Nairobi. Two days after the marriage ceremony, the Respondent left for the United Kingdom where he is a resident, leaving the Petitioner who is resident and domiciled in Kenya behind. They were not blessed with any issues of the marriage.
2. The Petition filed on 18<sup>th</sup> February 2015 is premised on grounds of cruelty and desertion of the Petitioner by the Respondent as particularised in the Petition. The Petitioner stated that she and the Respondent cohabited for only 2 days after which the Respondent left for the United Kingdom. The Petitioner states that the Respondent has constantly and frequently displayed an uncaring attitude towards her; that during the subsistence of the marriage the Respondent behaved in a manner to show that he has no interest in the Petitioner; that he refuses to speak to the Petitioner even when she initiates conversation; the Respondent has failed to appreciate the Petitioner's efforts to resolve the differences in the marriage and has categorically stated that he does not wish to have the issues of the marriage resolved.
3. The Petitioner further states that the Respondent has on several occasions insulted her through emails and other forms of communications; that he had denied the Petitioner conjugal rights by deciding to stay away in the United Kingdom with no intention of returning to Kenya or having the petitioner join him. The Petitioner asserts that the Respondent does not provide for the family, living the Petitioner with all financial expenses of the family and that during the subsistence of the marriage the Respondent filed an application number 13 of 2014 for dissolution of the marriage before the statutory period of 3 years and left the cause unprosecuted.
4. In the particulars of desertion the Petitioner further avers that, the Respondent left for the United Kingdom promising that he would facilitate the Petitioner to join him, but this did not happen as

after the Respondent travelled he made it difficult for the Petitioner to follow him. That since then they have not resumed conjugal co-habitation and have resided apart and lived separate lives resulting in an end of their marriage.

5. The Petitioner urges that due to the aforesaid acts of cruelty and desertion the Petitioner strongly feels that they cannot continue to hold out as husband and wife with the Respondent. She, has therefore, asked the court to dissolve the marriage between her and the Respondent. She confirms that this Petition has not been presented or prosecuted in collusion with the Respondent, nor has she connived or condoned the acts of cruelty, and unfaithfulness complained of.
6. On 19<sup>th</sup> January 2016 matter came before the Duty Judge under certificate of urgency. The matter was duly certified as urgent for reasons that the Petitioner was seeking to remarry within the year and the Respondent who resided outside the country was now in the country and due to leave on 31<sup>st</sup> January 2016. It was set down to proceed for hearing as a defended cause. The cause was fixed for hearing on 28<sup>th</sup> January 2016 for one day in Nairobi.
7. The Respondent was served with the Petition and he filed an Answer and Cross-petition dated 6<sup>th</sup> May 2014. The Respondent denied the allegations of cruelty and desertion made in the Petition. He averred that the Petitioner is the one who had no interest and had an uncaring attitude towards their marriage. He denies that he blocked any attempts at communication by the Petitioner or that he has refused to speak to her as alleged and asserts that it is the Petitioner who impeded any attempt at communication, by refusing to answer his calls, or to reply to his emails and text messages.
8. It was the Respondent's contention that he relocated to the United Kingdom in order to provide a better life and resources for his family and went ahead to process the Petitioner's travel documents. That when the documents were not availed right away the Petitioner refused to cooperate. It was also his assertion that he commenced Miscellaneous Application No. 134 of 2014, and the prayers sought were granted by Ougo J on 13<sup>th</sup> November 2014, making it possible for the Petitioner to file the current petition before three years of their marriage. He averred that he had also prepared a separate petition, but before he could file it the Petitioner filed her petition. He stated that there was consensus between him and the Petitioner on his departure to the United Kingdom and his failure to resume conjugal cohabitation with the Petitioner was not due to any ill motive on his part.
9. The Respondent in his cross petition reiterates the contents of the answer to the petition. He accuses the Petitioner of behaving negatively towards him, by ignoring him, and insulting the Respondent's immediate family thus causing him untold agony. The Respondent contends that due to the Petitioner's ill-treatment of him, he is unable to focus on his day to day life in the United Kingdom and as a result he has suffered bouts of depression. The Respondent also accuses the Petitioner of adultery, stating that she has been reported to have eloped from her father's house and moved in with another man.
10. I have perused the grounds of the petition and the evidence of the Petitioner. Matrimonial offences as provided under **section 66(2)** of the **Marriage Act, 2014** are as follows:

**“(a) adultery by the other spouse;**

**(b) cruelty by the other spouse;**

**(c) exceptional depravity by the other spouse;**

**(d) desertion by the other spouse for at least three years; or**

**(e) the irretrievable breakdown of the marriage.”**

It is not denied that the parties have not cohabited since the year 2012 to date. From the foregoing the Petitioner has proved the matrimonial offence of desertion as found in **Section 66(2)(e)** on a balance of probabilities. The particulars of adultery and cruelty as pleaded by the Respondent on the other hand have not been proved. It is evident however that both parties are agreed that the marriage celebrated between them on 28<sup>th</sup> November, 2012 cannot work and has irretrievably broken down with no hope of being salvaged. In the premise I find that the Petition has merit and allow it with orders as follows:

- a. That the marriage celebrated between the Petitioner and Respondent at the Registrar's office in Nairobi on 28<sup>th</sup> November, 2012 is hereby dissolved.
- b. That Decree nisi dissolving the said marriage is hereby issued to be made absolute thirty (30) days from the date of this judgment.
- c. There shall be no orders as to costs.

**SIGNED DATED and DELIVERED in open court this 30<sup>th</sup> day of March, 2016.**

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**L. A. ACHODE**

**JUDGE**

**In the presence of .....Advocate for the Petitioner**

**In the presence of .....Advocate for the Respondent**