

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

DIVORCE CAUSE NO.98 OF 2014

D S.....PETITIONER

VERSUS

S S.....RESPONDENT

JUDGMENT

1. The Petitioner and the Respondent got married in Swakopmund Namibia under the law of the Republic of Namibia and a marriage certificate serial number [particulars withheld] was issued. Thereafter they lived in Namibia in 2003, South Africa between 2004 and 2007, Ontario Canada between 2008 and August 2012 and Nairobi Kenya between August 2012 and 31st May 2013.

2. In his petition filed in court on the 9th of May 2014 the petitioner seeks that the marriage between him and the Respondent solemnized on the 2nd of May 2003 be dissolved and that each party bears costs of this petition.

3. The petitioner had pleaded his grounds for dissolution of the marriage at paragraphs 7, 8 and 9 of his petition. His grounds are cruelty, desertion and willful neglect. The particulars are stated in the petition.

4. On the 9th June 2014 the respondent filed an answer to the petition. The respondent has given a detailed response to the petitioner's allegations against her. She states that the prayers for divorce is actuated with malice based on bad faith, selfishness and are purported to rely on untrue allegations as against the respondent and she seeks a dismissal of the petition. The petitioner filed his reply to the answer to the petition on the 30th June 2014 in which he denies what has been averred by the respondent against him.

5. The petition as set down for hearing on the 25th of February 2016. The respondent's counsel M/s Gachiengo Gitau & Co. was served with the hearing but neither Counsel nor the respondent attended the hearing at 3pm as scheduled by the court. The matters proceeded in their absence and the petitioner testified. This is his evidence, that he filed the petition whilst resident in Kenya working as a consultant with [particulars withheld] a Dutch based company. He married the respondent in May 2003. The respondent has been cruel to him, she fought him, screamed at him and she spent a lot of their money. That she made a withdrawal of 20000 Canadian dollars on his credit card without his knowledge and that she left their matrimonial home on the 31st of May 2009 without prior notice. That this affected his contract as she was his team assistant in the contract and that there was none to do her work. That during their marriage they had a lot of fights; they had not had sex for over six months. That there is no way he can go back to her, he has tried reconciliation and there has been no positive response. That their marriage has irretrievably broken down and therefore he seeks dissolution of their marriage. The petitioner adopted the contents of his petition as his evidence.

6. Counsel for the petitioner did not submit he chose to rely on the evidence adduced at the hearing. The petitioner evidence was not challenged by the respondent as the respondent failed to attend the hearing. The petitioner testified that their marriage was not an easy one, they fought and eventually the respondent opted out, as per his evidence he was affected when the respondent left suddenly and has not returned from May 2009 to date. It is evident that the marriage between the petitioner and the respondent has

irretrievably broken down; the respondent deserted her marriage and has not returned then. It is now about three years since she left, efforts to get her to reconcile according to the petitioner has borne no fruits. The petitioner was resident in Kenya at the time the petition was filed and left Kenya in February 2015. There appears to no possibility of the petitioner and the respondent getting together again their marriage has irretrievably broken down. Desertion is a ground for divorce under the Matrimonial Causes Act, Section 8. The respondent deserted her matrimonial home and has not returned since then. The petitioner has proved his case. The marriage between the petitioner and the respondent solemnized on the 2nd of May 2003 in Swakopmund, Namibia is hereby dissolved. A decree *nisi* to issue and to be made absolute within 30 days. Each party to bear its own costs. It is so ordered.

Dated, signed and delivered this **14th** day of **April** 2016.

R. E. OUGO

JUDGE

In the presence of:

..... **For the Petitioner**

..... **For the Respondent**

Charity Court Clerk