



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

DIVORCE CAUSE NO. 118 OF 2015

BETWEEN

S N K.....PETITIONER

AND

R D K.....RESPONDENT

JUDGEMENT

1. On or about 14th June, 2002 the Petitioner then a bachelor was lawfully married to the Respondent then a spinster. They formalized their marriage at the Registrar's Office in Nairobi and they were issued with certificate of marriage serial Number [particulars withheld] in accordance with the **Marriage Act (Cap 150 Laws of Kenya)**. The couple thereafter, cohabited in Westlands, United Kingdom and Parklands respectively as husband and wife.

2. Currently the Petitioner is resident in Kenya while the Respondent lives in London. They were blessed with three issues of the marriage as follows:

- a) S born on 19th September, 2001
- b) I born on 27th October, 2003; and
- c) R born on 6th May, 2008

3. The Petition for divorce filed on 24th August, 2015 is premised on grounds of desertion by the Respondent. The Petitioner states that since April, 2012 the Respondent deserted the Petitioner without due cause and went to live in London. In the supporting affidavit, he avers to what he set out in the grounds of the Petition. The Petitioner states that due to the aforesaid act of desertion they cannot continue to hold out as husband and wife and has therefore, asked the court to dissolve the marriage contracted between himself and the Respondent.

4. The Petitioner confirms that this Petition has not been presented or prosecuted in collusion with the Respondent, nor has he connived or condoned the act of desertion complained of. He also certifies that there have been no previous proceedings filed regarding the marriage.

5. The parties signed an agreement dated 15th July 2015 in which they set out the terms on the access, maintenance and custody of the children of the marriage and the fate that would befall the matrimonial property.

6. The Respondent, who was served with the Notice and the Petition on 24th August, 2015 did not attend court to testify, nor file an answer or cross-petition to the petition.

7. On 11th May, 2016 the Deputy Registrar certified that the matter was suitable to proceed for hearing as an undefended cause for one day in Nairobi. At the hearing on 30th June 2016 the Petitioner testified and reiterated what he had set out in the Petition.

8. I have perused the grounds of the petition and the evidence of the Petitioner in the affidavit sworn on 24th August, 2015. Under the law, for the matrimonial offence of desertion to be available as a ground to a Petitioner in a divorce matter, it should have persisted for a period of at least three years. **Section 66(2) (e) of the Marriage Act, 2014** provides with regard to desertion as one of the matrimonial offences in the following terms:

“Desertion by the other spouse for at least three years”

From the foregoing the Petitioner has proved the matrimonial offence of desertion as set out in the law, since his averments are not contested.

9. The parties have lived apart for the last three years on account of desertion by the Respondent according to the uncontested evidence of the Petitioner. The Petitioner also states that attempts at reconciliation have not been fruitful because the Respondent is not cooperative. It is evident therefore that the marriage celebrated between the parties herein on 14th June, 2002 has irretrievably broken down with no hope of being salvaged. It exists only on paper.

10. 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 14th June, 2002 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 **21st day of July 2016.**

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L. A. ACHODE

JUDGE

In the presence ofAdvocate for the Petitioner

In the presence ofAdvocate for the Respondent