

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

DIVORCE CAUSE NO.121 OF 2015

I W N.....PETITIONER

VERSUS

P M N..... RESPONDENT

JUDGMENT

1.The petitioner **I W N** via her 13th August 2015 avers that she got married the respondent on 25th November 1998 at the Registrar's office, Nairobi under the Marriage Act, Cap 150 Laws of Kenya. After the said celebration of marriage the couple lived within Nairobi until January 2001 when the respondent moved to the United States of America. The couple do not have any issue to the marriage. That since moving to the United States of America the respondent has refused to resume cohabitation with the petitioner and has unilaterally deserted the matrimonial home. That the marriage has irretrievably broken down. The petitioner prays for dissolution of the marriage to the respondent and cost of the cause.

2. The respondent was served via registered post to his last known address. The respondent did not enter appearance or file an answer to the petition. The Registrar on 1st September 2016 issued a certificate for the matter to proceed as undefended.

3. When the matter came for hearing the petitioner testified that since the respondent travelled to the United States of America that she is informed that he comes to Kenya they never see each other or stay together.

4. Desertion is one of the grounds provided for under the Matrimonial Causes Act Cap 152 (now repealed) and also the Marriage Act 2014. For the court to grant the orders sought it must be satisfied that the petitioner has established a case on Desertion. The petitioner's evidence was not controverted. The petitioner has sought divorce on grounds of desertion. The respondent is said to have travelled to the United States way back in 2001 and has never resumed cohabitation with the petitioner. A perusal of the marriage certificate indicates that the petitioner was 19 years when she contracted the marriage with the respondent. The main aim of marriage is companionship the respondent upon leaving the country did not appear to make any efforts to resume cohabitation with the petitioner. Currently the petitioner is 37 years old. I believe denying the petitioner a divorce is forcing her to stay shackled to the respondent who abandoned her close over 15 years ago. I find that the respondent is guilty of desertion and allow the petitioner's petition.

5. Due to the said desertion the marriage has irretrievably broken down and the only course of action that is just is to dissolve the marriage. The parties have lived apart since 2006. I find that the marriage between the parties has irrevocably broken down and the respondent deserted the petitioner. I therefore dissolve the marriage between the petitioner and the respondent that was celebrated at the Registrar's of Marriages at Nairobi on 25th November 1998. A decree nisi to issue and to be made absolute within 30 days. No orders as to costs. It is so ordered

Dated signed and delivered this **15th** Day of **December** 2016.

R. E. OUGO

JUDGE

In the presence of:

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

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

Ms. Charity

Court Clerk