



**REPUBLIC OF KENYA**

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

**DIVORCE CAUSE NO.180 OF 2014**

**E W O .....PETITIONER**

**VERSUS**

**Y O.....RESPONDENT**

**JUDGMENT**

1. The Petitioner has filed a petition dated 9<sup>th</sup> September 2014 seeking the dissolution of her marriage to the respondent. She stated that she got married to the respondent then a divorcee, at the registrar's office in Nairobi under the Marriage Act. After the said celebration of marriage they cohabiting with the respondent as husband and wife in Hurligham estate within Nairobi between the year 1989 and 1990 and subsequently moved to Meru town and lived there until 1991 when the respondent moved to Japan for 2 years and came back in 1993. The parties are blessed with two issues of the marriage. K O born in 1989 and Y O born in 1991.
2. The petitioner argues that since the celebration of the said marriage the marriage has had irreconcilable differences between her and the respondent and in 1993 the respondent abandoned the matrimonial home and moved to Tanzania and has not resumed co-habitation with the petitioner since then. That the marriage has irretrievably broken down and that the petitioner has not in any way condoned the acts of desertions alleged and neither has she been accessory to connived or condoned the acts of desertion alleged herein. She adds that petition has not been brought in collusion with the respondent. The petitioner states that she had initially filed Divorce Cause no. 85 of 2009 but the file cannot be found. She seeks that the court dissolves the marriage between her and the respondent and that each party bears their own cost.
3. The respondent despite being served did not enter appearance of file an answer to the petition. The petitioner applied for Registrar's certificate and the matter proceeded as an undefended petition.
4. The petitioner testified that she got married to the petitioner in 1989. The Registrar's office in Nairobi and separated in 1993. That she tried to look for the respondent from the Embassy and through the family but could not find him. That she was still living with the children. That K is now 26 years while Y is 22 years. That since wants a divorce so that she is able to change her name and haven't been together with the respondent for over 20 years.
5. The petitioner's evidence was not challenged. The petitioner has raised ground of desertion. It is evident that the marriage has irretrievably broken down. Section 8 of the Matrimonial Act (now repealed) and the Marriage Act 2014 at Section 66 outlines the grounds for dissolution of a marriage, amongst them being desertion. The petitioner in her testimony stated that the respondent abandoned the matrimonial home in 1993 and has not returned back. I find that the marriage has irretrievably broken down and there is no possibility of reconciliation. This court therefore dissolves the marriage between the Petitioner and the Respondent celebrated in June 1989. A *decree nisi* to issue forthwith and to be made absolute within 30 days. No orders as to cost. It is so ordered.

Dated, signed and delivered this **26<sup>th</sup>** day of **March** 2015.

**R. E. OUGO**

**JUDGE**

In the presence of:

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

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

.....**Court Clerk**