

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

DIVORCE CAUSE NO. 59 OF 2014

BETWEEN

S MPETITIONER

AND

E N MRESPONDENT

JUDGMENT

1. The Petitioner, then a spinster and the Respondent then a bachelor were married on 10th December, 2001 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 along State House road in Nairobi for eight years. Both Petitioner and Respondent are domiciled in Kenya and have no issues of the marriage.

2. The Petition filed on 17th March 2014 is premised on grounds of desertion. The Petitioner averred that since 5th December 2009, the Respondent deserted the matrimonial home. The particulars of desertion were that in the last year of their living together, the Respondent took to staying out of the matrimonial home night after night on the pretext of being out of town. He would not pick her calls when she called, he would lie about his whereabouts and the communication between them gradually reduced. The Petitioner states that sometime in February 2009 at the Panafric Hotel in Nairobi, the Respondent made it clear to her that he had no intention of continuing with the marriage.

3. The Petitioner further states that on 5th December, 2009 the Respondent packed his personal effects in a small bag and left informing her that he was going to Nakuru. That was the last time she saw him in their matrimonial home. The Petitioner also states that in the month of April 2010, the Respondent cleared his personal belongings from the house and paid rent upto December 2010. Since then, the Petitioner lived in the matrimonial home alone until August 2011. That on 2nd October 2011 a day before her departure for Mauritius where she was to relocate, she met the Respondent and informed him of her decision to move to Mauritius. The Respondent wished her well and since then there has been no communication between them.

4. The Petitioner asserts that the Respondent has lived away from her for more than four years and she is convinced that he will not return to resume cohabitation with her. She has therefore asked the court to find that the marriage between the Petitioner and the Respondent has broken down irretrievably. She prays for the dissolution of the marriage and confirms that this Petition has not been presented or prosecuted in collusion with the Respondent, nor has she connived or condoned the desertion. She also certifies that there have been no previous proceedings filed regarding the marriage.

5. The Respondent was served as is evinced by the affidavit of service dated 2nd March 2014 but did not file an answer to the Petition or a cross-Petition. On 2nd October 2014 the Deputy Registrar certified that the matter was suitable to proceed for hearing as an undefended cause for one day in Nairobi. The Petitioner testified on 5th March 2015 and basically restated what she had set out in the grounds of the Petition and the supporting affidavit. The Respondent did not appear in court.

6. From the foregoing it is evident that the marriage celebrated between the parties herein on 10th

December, 2001 has irretrievably broken down and there is no will, at least on the part of the Respondent, to salvage it.

I therefore make orders as follows:

- a. That the marriage celebrated between the Petitioner and Respondent at the Registrar's office in Nairobi on 10th December, 2001, 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 **19th day** of **March 2015**.

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L. A. ACHODE

JUDGE