

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

DIVORCE CAUSE NO. 118 OF 2014

BETWEEN

D M K.....PETITIONER

AND

S M M.....RESPONDENT

JUDGEMENT

1. Marriage was celebrated between the parties herein on 8th December 2009 at [particulars withheld] Church, Nairobi, Kenya. A copy of the marriage certificate is not attached to the petition. The parties cohabited at [particulars withheld], Meru and Githurai 44, Nairobi. They have been blessed with two children, V M and P K (both born on 1st September 2009).
2. The petition in this matter was filed in court on 25th May 2014. The petitioner accuses the respondent of desertion. She is to have stopped communicating with the petitioner by generally giving him silent treatment, she has left to go and live with her parents, she was taken away from the petitioner by her parents sometime in December 2009 while the parties were residing at [particulars withheld] and she has since refused to come back to him, when he relocated to Nairobi in February 2010 and got residential quarters there she refused to join him, when she eventually joined in April 2010 after one week she locked him out of his house, among other allegations
3. The respondent entered appearance on 20th June 2014, and filed an answer to the petition and a cross-petition on 28th June 2014. In her cross-petition, she accuses the respondent of cruelty. He is said to have denied her conjugal rights, neglected to assist her after an operation, not paying medical bills, not buying food, never there for the children of the marriage, arriving home late and not spending quality time with the family, chasing her from the matrimonial home in July 2010 and committing adultery.
4. The matter was cleared by the Deputy Registrar on 30th October 2014 to proceed as a defended cause.
5. The matter came up for hearing on 18th December 2014. The petitioner attended court but the respondent was absent. The date for hearing had been fixed *ex parte* on 4th December 2014, but there is a notification of service on record drawn by the petitioner indicating that the advocates of the respondent were duly served on 4th December 2014. The notification bears a date stamp from the firm of Ajaa Olubayi & Co., Advocates, with a signature of the officer who received the service at the law firm and the date when service was effected.
6. The petitioner testified on 18th December 2014 and gave vent to the allegations made in his petition. No counter evidence was given by the respondent, and therefore the petitioner's story was not controverted.
7. I am satisfied from the recorded evidence that the respondent is guilty of desertion. Although a copy of the certificate of marriage was not attached to the petition, nor produced at the hearing, I

am satisfied that such a marriage did take place as the respondent pleaded as much in her answer to petition and cross-petition, as well as in her statement dated 28th July 2014 and filed herein on even date.

8. It would appear to me that the marriage between the parties herein has irretrievably broken down. It would also appear to me that there has been no collusion between the petitioner and the respondent in the bringing of these proceedings. There is also no evidence that the petitioner has condoned the desertion proved in the matter.

9. I hereby dissolve the marriage celebrated between the petitioner and respondent on 8th December 2009. Decree *nisi* shall issue forthwith and shall be made absolute after thirty (30) days. There shall be no order as to costs.

DATED, SIGNED and DELIVERED at NAIROBI this 31ST DAY OF JULY, 2015.

W. MUSYOKA

JUDGE