

REPUBLIC OF KENYA

IN THE HIGH COURT

AT MALINDI

DIVORCE CAUSE NO. 6 OF 2005

G G.....PETITIONER

=VRS=

F E EBRESPONDENT

J U D G M E N T

The Petition dated 30th March 2005 seeks to have the marriage between the petitioner and the respondent dissolved. It is also seeking custody of the only child of the marriage. The respondent filed her answer to the petition dated 12th April 2005 but did not attend court to testify. In her answer to the petition, the respondent sought dissolution of the marriage.

The petitioner's evidence is that he comes from Italy. He has lived in Malindi for over twenty six years. He got married to the respondent on 6th July 2001 and they got one child on 27th January 2002. It is his evidence that his wife deserted him and she is now married to another Italian man. It is four years now from the time his wife deserted him. The respondent and the other man have a child by the name F R. Initially he thought the child was his. The respondent now lives in Italy with his new husband and whenever she visits Kenya she does not live with the petitioner. The child between the parties lives with the petitioner and goes to school in Malindi. The two lived together for only two years.

From the pleadings of each party, it is clear that the marriage between the parties herein has broken down. Each party is seeking divorce. The respondent seems to have deserted her matrimonial home and is now living in Italy. It is the petitioner's evidence that the respondent is living with another man and they even have a child together. The two only lived together for two years . In essence therefore since about 2003 the two parties have never lived together. This petition was filed in the year 2005. It is now ten years since filling of the petition and the parties have neither lived together or reconciled their differences.

The above scenario is a clear sign that the marriage between the parties herein has irretrievably broken down. Each party seems to have moved on with his/her own life. I do find that the petitioner has proved his case. The respondent deserted the matrimonial home and has never returned for over ten (10) years. The marriage was solemnised under the old Marriage Act and was meant to be monogamous. The respondent has opted to live with another man even when she is married to the petitioner. This is a clear proof of adultery. Parties have been living separately. The respondent deserted the petitioner for a period of over three years and the marriage has irretrievably broken down.

In the end, I do find that the petition has been proved. The marriage between the petitioner and the respondent is hereby dissolved. The petitioner shall have the custody of the child born out of the marriage. A decree nisi to issue. Each party to meet their own costs.

Dated, signed and delivered at Malindi this ...**10TH**.... day of **December** 2015.

SAID J. CHITEMBWE

JUDGE

