



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

DIVORCE CAUSE NO. 48 OF 2012

BETWEEN

E N.....PETITIONER

AND

J K.....RESPONDENT

JUDGEMENT

1. The petitioner in this matter married the respondent on 26th August 2008 at a ceremony at the Office of the Registrar of Marriages at Nairobi. A certificate of marriage No. [particulars withheld] was duly issued, copy of which is attached to the petition filed in court in this cause. The couple thereafter cohabited as husband and wife at Tassia Estate in Nairobi. The couple was blessed with two issues – R N (4 years) and A (2 years).
2. The petition herein was filed in court on 15th March 2012. He alludes to differences which are irreconcilable and claims that the marriage has broken down irrevocably. He also alleges that the respondent had deserted him without just cause for a period of two years immediately before the presentation of the petition.
3. The petition and a notice to appear were served on the respondent, and she entered appearance, and filed an answer to the petition. She blames the petitioner for the desertion because of habitual neglect of his duties as husband and father, violent abuse and denial of conjugal rights. She avers that the petitioner never loved her right from the beginning hence exposing her to unhappiness. He is accused of making no effort at all at reconciliation.
4. The matter was cleared for hearing on 27th September 2012, and was certified to proceed as a defended cause. It was placed before me for hearing on 4th July 2013. It is the petitioner who testified, the respondent did not attend court. He testified that the respondent left him in July 2010. He said that the differences between them were irreconcilable.
5. The petitioner pleads that the desertion was for a period of two years preceding the presentation of the divorce petition. *Section 8(1)(b)* of the Matrimonial Causes Act provides that –

‘A petition for divorce may be presented to the court either by the husband or the wife on the ground that the respondent –

- a. ...
- b. *Has deserted the petitioner without cause for a period of at least three years immediately*

- preceding the presentation of the petition; or*
c. ...'

The petition herein was therefore presented prematurely.

6. I am disposed to make the following orders;

- a. That the petition dated 14th March 2012 is hereby dismissed;
- b. That the issue concerning the custody and maintenance of the children of the marriage shall be referred to the Children's Court; and
- c. That the respondent shall have costs of the suit.

DATED, SIGNED and DELIVERED at NAIROBI this 31st DAY OF January, 2014.

W. MUSYOKA

JUDGE