

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

DIVORCE CAUSE NO. 21 OF 2013

E S.....PETITIONER

VERSUS

I M K.....RESPONDENT

JUDGMENT

The petitioner **E S** has filed this petition dated 11th April, 2013 seeking the dissolution of his marriage to the respondent **I M K**. The petition and a Notice to Appear were duly served upon the respondent. The respondent appointed the firm of Mutubia and Company Advocates to appear on her behalf. However, she did not file any reply to the petition. The matter therefore proceeded as an undefended cause.

The petitioner testified in court on 30th October, 2013. He told the court that he is an Italian citizen and met the respondent whilst on a visit to Kenya. The two got married on 3rd March, 2010. The annexed copy of the marriage certificate serial number [Particulars withheld] provides proof of their union. The couple lived as man and wife in Italy. The respondent however made several trips back to Kenya on the pretext that she needed to handle a family problem. In July, 2010 the respondent left Italy to return to Kenya. She did not return to the matrimonial home in Italy. The petitioner said he made several calls requesting her to return but she declined. Later the petitioner saw on social media a photograph of the respondent with another man. When he asked her about it her response was that she had a new life (and no doubt a new man). Thereafter the respondent changed her phone number so the petitioner was unable to contact her. The petitioner therefore filed this petition.

The evidence of the petitioner remains unchallenged. The respondent did appoint counsel but did not take any further steps to participate in these proceedings. The couple after marriage were residents in Italy but the respondent kept returning to Kenya claiming that she needed to solve a family problem. In July, 2010 the respondent left Italy never to return again. She is next seen posing with a different man on social media. It is quite clear that the respondent's intention was to abandon her husband. There is no possibility of a meaningful marriage where one spouse insists on living a continent away from the matrimonial home. The respondent's action in cutting off contact with her husband is a clear indication that she wanted nothing more to do with him. She willfully abandoned the matrimonial home, without reason for three (3) years. This amounts to desertion on line with section 8(1) (b) of the Matrimonial Causes Act. The respondent's action in taking up with another man and posing with him on social media at worst smacks of adultery and certainly amounts to cruelty. It is clear her heart lies elsewhere. I find that the petition is merited on grounds of both desertion and cruelty therefore the same is allowed. Decree nisi to issue to be made absolute within three (3) months of today's date. No order on costs.

Dated and delivered in Mombasa this 24th day of February, 2014.

M. ODERO

JUDGE

In the presence of:

No Appearance by either party