

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

DIVORCE CAUSE NO. 13 OF 2012

I M M.....PETITIONER

VERSUS

M A A.....RESPONDENT

JUDGMENT

The petitioner **I M M** has filed this petition seeking the dissolution of his marriage to the respondent **M A A**. Despite having been duly served with the petition and summons the respondent failed to either enter appearance or file a reply to the petition. The matter proceeded as an undefended cause. The petitioner testified in court on 7th November, 2013. He told court that he and the respondent were married at the Registrar's office in Mombasa on 14th October, 2008. The annexed copy of certificate of marriage serial number [Particulars withheld] provides proof of the marriage. The couple bore no children together. The petitioner went on to state that in December, 2009 the respondent abandoned the matrimonial home in Mikindani. He states that he returned home on 10th December, 2009 only to find that the respondent had moved out with all the household goods. He was left only with his clothes. He later came to learn that the respondent was involved with another man. For the reasons the petitioner is seeking a divorce.

Section 8(1)(b) of the Matrimonial Causes Act Cap 152 Laws of Kenya provides that a divorce may be granted in case where a respondent

“(1) has deserted the petitioner without cause for a period of at least three years immediately preceding the presentation of the petition.”

The petitioner's evidence, (which has neither been challenged nor controverted) is that on 10th December, 2009 the respondent moved out of the matrimonial home in Mikindani taking with her all the household goods. The couple have never lived as man and wife since that time. If the respondent had valid reason and/or cause to leave the matrimonial home, she has chosen not to divulge this to the court. Where one party deliberately leaves the home no marital union can be sustained. Her intention was clearly to leave her marriage as to date she has not returned. It is clear the marriage has broken down. I therefore allow this petition for divorce. 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 31st day of March, 2014.

M. ODERO

JUDGE

In the presence of:

No appearance by either party