

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

DIVORCE CAUSE NO. 12 OF 2013

S J B.....PETITIONER

VERSUS

B S R.....RESPONDENT

JUDGMENT

Before court is the petition dated 16th May, 2013 filed by the petitioner **S J B** seeking the dissolution of his marriage to the respondent **B S R**. The respondent despite having been duly served with the petition failed to either enter appearance or file any reply to the petition. The matter therefore proceeded as an undefended cause. The petitioner testified before the court on 17th February, 2014. He told the court that he and the respondent met in India on 5th December, 2010. They got married under customary law on 9th December, 2010. He annexed a copy of the certificate of registration of the marriage issued in India on 10th December, 2010 **Pexb1**. After the marriage the couple moved to Mombasa in Kenya where they began to live with the extended family as is common in the Indian Community. The couple did not bear any children together.

A year after the marriage the respondent requested to go back to India to attend her brother's wedding. The petitioner purchased a return ticket for her and the respondent left the country on 30th May, 2012. She was scheduled to return on 3rd July, 2012 but failed to return as expected. The petitioner made several calls to the respondent but she would evade him. He approached her family to intervene but to no avail. The respondent never returned to her matrimonial home in Mombasa but in September, 2012 the petitioner received a letter from a lawyer in India claiming that the petitioner had mistreated his wife.

The evidence tendered by the respondent remains unchallenged and is uncontroverted. The couple had only lived together for one year before the respondent left ostensibly to attend a wedding. She failed and/or declined to return to her husband in Mombasa. The fact that the respondent has no intention of returning to her matrimonial home is made clear by the fact that two (2) years subsequent to her departure she has still not returned. Instead she got a lawyer to write claiming that the petitioner's family had treated her cruelly. The petitioner's attempts to seek reconciliation through her parents have been rebuffed. Clearly a marriage cannot subsist where one partner insists on living a whole continent away from her spouse. This amounts to constructive desertion. The petitioner is denied the companionship and intimacy expected in a marriage. By her actions the respondent has shown clearly that she has no interest in the marriage. The petitioner should not be compelled to hold on to that which exists in name only. I do 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