

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

DIVORCE CAUSE NO. 92 OF 2013

E W K.....PETITIONER

VERSUS

G M.....RESPONDENT

J U D G M E N T

The Petitioner and the Respondent were on 24th November 2001 married under the **Marriage Act**. The marriage was celebrated at the Mombasa Women's Hall, Mombasa. After the celebration of the said marriage, the Petitioner and the Respondent cohabited together as husband and wife in Mombasa. The marriage has not been blessed with any issues. According to the Petitioner, the Respondent had committed the matrimonial offence of desertion. The Petitioner averred that since August 2009, the Respondent deserted the matrimonial home and has lived elsewhere. The Petitioner states that she later learned that the Respondent had relocated to Hamburg, Germany. She averred that since August 2009 when the Respondent left the matrimonial home, he has not returned to the said matrimonial home. She accused the Respondent of being cruel to her. In the particulars set out in the petition for divorce, the Petitioner averred that the Respondent had denied her conjugal rights. She complained that the Respondent had neglected his familial duties by failing to provide her basic needs. It is on account of the above matrimonial offences that the Petitioner is of the view that her marriage to the Respondent had irretrievably broken down with no possibility of salvage. She therefore urges the court to dissolve the marriage.

The Respondent was served with a copy of the petition for divorce together with a notice requiring him to enter appearance. He did not enter appearance. Neither did he file an answer to the petition. The Deputy Registrar of this court issued a certificate certifying that this was a suitable divorce cause to be disposed of as an undefended cause. During the hearing of the cause, this court heard oral evidence adduced by the Petitioner. She essentially reiterated the contents of her petition for divorce. She testified that she had been separated from the Respondent since August 2009 when the Respondent left the matrimonial home. She stated that the Respondent resides out of the country. He currently resides in Germany. The Petitioner told the court that any effort at reconciliation had not borne fruit and therefore the only thing remaining is for this court to dissolve the marriage.

This court has carefully considered the evidence adduced by the Petitioner in this cause. It was clear to this court that the marriage between the Petitioner and the Respondent has indeed irretrievably broken down with no possibility of salvage. The Petitioner and the Respondent have been separated for more than four (4) years. The Petitioner's efforts at reconciliation have proved unsuccessful. It was apparent from the testimony of the Petitioner (which was uncontroverted), that the Petitioner should be allowed to move on with her life. The Respondent is no longer a resident of this country. The Petitioner established the matrimonial offences of desertion and cruelty. In the premises therefore, this court will grant petition for divorce.

The marriage celebrated on 24th November 2001 at the Mombasa Women's Hall, Mombasa between the Petitioner and the Respondent is hereby dissolved. Decree nisi dissolving the said marriage is hereby issued. The decree nisi shall be made absolute thirty (30) days from the date of this judgment. There shall be no orders as to costs.

DATED AT NAIROBI THIS 17TH DAY OF MARCH, 2014

L. KIMARU

JUDGE