

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

DIVORCE CAUSE NO. 57 OF 2012

E B.....PETITIONER

VERSUS

F B.....RESPONDENT

JUDGMENT

The petitioner **E B** has filed this petition dated 31st January, 2013 seeking the dissolution of his marriage to the respondent. The respondent **F B** despite having been served with both the petition and a notice to enter appearance did not bother to put in any papers in reply. The matter therefore proceeded as an undefended cause.

The petitioner testified before the court on 25th February, 2014. He told the court that he is a German national who came to Kenya and met the respondent. The two got married in Kwale on 13th March, 2010. The annexed copy of their marriage certificate serial number [*Particulars withheld*] provides adequate proof of the fact of the marriage. After the marriage the couple lived together for only one week. Thereafter the petitioner returned to his country Germany on 17th March, 2010. The respondent meanwhile remained in Ukunda with the petitioner's parents. The couple had agreed that the respondent obtain an identity card and a passport to enable her travel to Germany to join her husband. The petitioner even paid for the respondent to attend German classes at the German Institute in Mombasa in anticipation of her relocation. He states that the respondent did not bother to pursue a passport for herself neither did she attend the German classes which he had already paid for. When the petitioner called the respondent she would abuse him and tell him to leave her alone. After 1 ½ months the respondent moved out of his parents' home in Msambweni and returned to her parents. The petitioner returned to Kenya on 11th January, 2011. He was unable to meet the respondent for a discussion. He now seeks a divorce.

The evidence of the petitioner is uncontroverted. The respondent opted not to participate in these proceedings. The marriage appears to have been a non-starter. The couple only lived together for one week after which the petitioner left to his country Germany. He did however make arrangements to have his wife travel to join him in Germany. It appears that the respondent was not willing to do this. She did not bother to obtain a passport a document without which one cannot travel. She instead returned to her parents' home. From her actions the respondent clearly had no interest in the marriage. She allowed the petitioner to spend money paying for German classes which she did not bother to attend. This together with her abuses whenever he called to talk to her amounts to cruelty. Even if for one reason or another she had failed to secure a passport, she would have remained with the petitioner's parents and awaited his return from Germany so that together they could chart the way forward. Even when the petitioner returned to Kenya the respondent was still unavailable to him. It is clear the marriage has failed. The petitioner ought not to be compelled to remain in union with a woman who does not want to live with him. I 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 28th day of April, 2014.

M. ODERO

JUDGE

In the presence of:

No Appearance by either party

Court Clerk Mutisya