

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
DIVORCE CAUSE NO. 38 OF 2012

M W M.....PETITIONER

VERSUS

B C M.....RESPONDENT

JUDGMENT

The petitioner **M W M** has filed this petition dated 24th July, 2012 seeking the dissolution of her marriage to the respondent **B C M**. Both the petition and a summons to enter appearance were duly served on the respondent through his appointed advocates. However no reply to the petition was filed. Likewise despite having been properly served with a hearing notice the respondent failed and/or declined to appear in court to testify on his behalf. The matter therefore proceeded in his absence.

The petitioner testified before court on 24th February, 2014. She told the court that she got married to the respondent on 29th April, 2009 at the Registrar’s office in Mombasa. A copy of the marriage certificate serial number [Particulars withheld] provides proof of the marriage. Thereafter the couple cohabited as man and wife at Mtwapa. Their union bore no children. Six (6) months after the marriage the respondent ostensibly left the matrimonial home claiming that he was going to look for a job. He never returned. From that time i.e. October, 2009 the couple have not communicated with each other at all nor have they resumed cohabitation. The petitioner tells the court that she has no idea where the respondent now resides. She seeks a divorce to enable her to move on with her life.

The grounds upon which a divorce may be granted in Kenya are to be found in section 8 of the Matrimonial Causes Act Cap 152 Laws of Kenya. Section 8(1)(b) provides that

“A petition for divorce may be presented to the court either by the husband or the wife on the ground that the respondent –

a.

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

It is clear that desertion in line with section 8(1)(b) has been established. The respondent left the matrimonial home in October, 2009, which is three years before July, 2012 when the petition was filed. A marital union cannot be sustained where one party deliberately chooses to vacate the matrimonial home. The respondent has effectively ‘*opted out*’ of the marriage. I am satisfied that valid grounds exist for a divorce. I therefore allow this petition for dissolution of the marriage. 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:

Ms. Kiso for Petitioner

Court Clerk Mutisya