



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MOMBASA**  
**DIVORCE CAUSE NO. 51 OF 2012**

I B W.....PETITIONER

VERSUS

W B ..... RESPONDENT

**JUDGMENT**

The petitioner herein **I B W** has filed this petition dated 4<sup>th</sup> October, 2012 seeking the dissolution of her marriage to the respondent **W B**. The respondent was duly served with both the petition and a summons to enter appearance. He did neither. The matter therefore proceeded as an undefended course.

The petitioner testified before this court on 17<sup>th</sup> December, 2013. She told the court that she met and married the respondent in Mombasa on 9<sup>th</sup> December, 1989. She produces original copy of the marriage certificate serial number [Particulars withheld] as proof of the marriage Pexb1. After the marriage the couple began to cohabit as man and wife in Shanzu. They bore a daughter called ‘*L B*’ who was born in February, 1989.

The petitioner states that the respondent was an unfaithful husband who engaged in several extra marital affairs. She narrates how in the year 2008 she travelled to Germany in order to visit her parents. When she returned to Shanzu she discovered that during her absence a girl had been living with the respondent in their matrimonial home. This led to tension and quarrels between the two. In December, 2008 the respondent left the matrimonial home and has never returned. The petitioner now seeks a divorce as she too wishes to return to her home country of Germany. Their daughter who is now an adult lives an independent life in Germany.

The evidence of the petitioner remains unchallenged and is uncontroverted since the respondent chose not to respond to this petition. Section 8 of the Matrimonial Causes Act, Cap 152 Laws of Kenya provides the grounds upon which a divorce maybe granted in Kenya. Section 8(1)(b) of said Act provides:

**“8(1) A petition for divorce maybe presented to the court either by a 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.....”**

In this case the respondent walked out of the matrimonial home in Shanzu in December, 2008. By the

time this petition was being filed in October, 2012 about four (4) years had elapsed. The respondent has not returned to date. It would be unfair to expect the petitioner to remain bound in marriage to a spouse who clearly has no interest in her or the marriage. I am satisfied that the ground of desertion has been proved. On this basis I do allow this petition for divorce. Decree nisi to issue to be made absolute within three (3) months to today's date. No order on costs.

**Dated and delivered in Mombasa this 14<sup>th</sup> day of April, 2014.**

**M. ODERO**

**JUDGE**

In the presence of:

No appearance by either party

Court Clerk Mutisya