



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MOMBASA**  
**DIVORCE CAUSE NO. 8 OF 2012**

**C J K.....PETITIONER**

**VERSUS**

**S O O.....RESPONDENT**

**JUDGMENT**

The petitioner **C J K** has filed this petition dated 30<sup>th</sup> January, 2012 seeking the dissolution of her marriage to the respondent **S O O**. The respondent was duly served with both the petition as well as a summons to enter appearance. He did not enter appearance nor file any reply to the petition. The matter proceeded as an undefended cause.

The petitioner testified before the court on 3<sup>rd</sup> December, 2013. She told the court that she got married to the respondent on 30<sup>th</sup> December, 1999. The certified copy of the marriage certificate serial number [Particulars withheld] is sufficient proof of the fact of marriage. At the time of her marriage to the respondent the petitioner already had a daughter **D T C** who is now 17 years old. Her union with the respondent resulted in a son named **B O O** now aged 13 years. She produced a copy of his birth certificate as an exhibit **Pexb2**. After the marriage the couple resided in Mombasa. In the year 2003 the respondent resigned from his job leaving him with no income. As a result the petitioner who was working with the Kenya Revenue Authority had to single handedly cater for all the needs of the family including utility bills, household expenses as well as school fees for their son. In the year 2006 the respondent commenced an adulterous affair with a lady known as 'E O'. The respondent would often see the two together and found intimate messages from this lady to the respondent. The Petitioner called in the respondent's mother and sister to try and hold discussions to resolve the issue but this bore no fruit as the respondent adamantly refused to participate in any discussion. The respondent finally left the matrimonial home on 23<sup>rd</sup> December, 2008. He has never returned and has made no attempt at reconciliation.

The evidence of the petitioner remains uncontroverted in all material respects. As stated earlier the respondent chose not to participate in these proceedings. The court has no reason to doubt the testimony of the petitioner. I note that previous proceedings involving the two parties being Divorce Cause No. 6 of 2010 before the Chief Magistrate's Court, which was dismissed for lack of jurisdiction. Thereafter the petitioner filed the present cause.

Section 8(i)(b) of the Matrimonial Causes Act 2008 allows a divorce to be granted on grounds that the respondent

**“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 left the matrimonial home in December, 2008. To-date the couple have lived apart and the respondent has never returned. Thus it is proved that he has been in active desertion for at least four (4) years prior to the filing of this petition. I find that the ground of desertion has been proved.

In addition the petitioner has testified that since the year 2003 she has had to provide single-handedly for the couple's son. She has paid his school fees and medical costs alone. The respondent has clearly abandoned his role as a husband and a father. To leave the whole burden of the family on the shoulders of the petitioner does amount to irresponsibility and cruelty. On this ground too I would be inclined to grant the divorce. Based on the foregoing I do allow this petition for divorce. Decree nisi to issue to be made absolute within three (3) months of today's date.

The petitioner has made additional prayers for custody of the child and maintenance for his upkeep. These are prayers which ought properly be initiated before the Children Court in Tononoka. However, I do direct that the status quo regarding custody of the child be maintained thus the child will remain in the custody of the petitioner pending any further orders of a court of competent jurisdiction. The prayer for maintenance is to be canvassed before the Children Court.

**Dated and delivered in Mombasa this 28<sup>th</sup> day of May, 2014.**

**M. ODERO**

**JUDGE**

In the presence of:

Mr. Mkan h/b Ms. Okata

Court Clerk Mutisya