

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERICHO

DIVORCE CAUSE NO.18 OF 2008

G M.....PETITIONER

VERSUS

C C R.....RESPONDENT

JUDGMENT

The subject matter of this judgment is the Petition dated 18th November 2008 in which G M the Petitioner herein sought for the following orders:

- i. The dissolution of the marriage between him and C C R.
- ii. Costs of the Petition.
- iii. Any other relief this court deems fit.

When served with the Petition, C C R, the Respondent, filed a replying affidavit to oppose it, claiming that the Petition does not disclose any reasonable cause of action.

The Petitioner was allowed to proceed for hearing *ex parte* when the Respondent failed to appear for the hearing of the case despite having been served with a hearing notice as shown in the affidavit of service of Robert Kipngetch sworn on 11th March 2014. G K M produced in evidence a marriage certificate issued pursuant to the provisions of the Marriage Act as an exhibit to show that he got married to the Respondent on 25th February 2000 and that their marriage was solemnized at the D.C.'s office, Kericho. It is the Petitioner's evidence that he established a matrimonial home at [particulars withheld] village where they cohabited until the year 2008 when the Respondent deserted the matrimonial home. The Petitioner claimed that he has tried to persuade her come back home in vain.

He produced minutes of the family and clan meetings held to reconcile them but the Respondent frustrated his efforts. The Petitioner stated that their marriage is irretrievably broken down with no chances of revival. He prayed for the marriage to be dissolved on account of desertion on the part of the Respondent. It is unfortunate that the Respondent failed to attend court to rebut or refute the Petitioner's evidence. I observed his demeanor as he testified and I am convinced he was consistent and a truthful witness. I have no reason to doubt the Petitioner's assertion that the Respondent deserted the Matrimonial home from 2008 up to date, that is a period of over five years. There is no evidence that she has any intention of coming back. Under Section 8 (1) of the Matrimonial Causes Act, it is a ground for divorce if it is shown that the Respondent deserted the Petitioner without cause for a period of at least three (3) years immediately preceding the presentation of the Petition. The Petitioner has already shown that the Respondent left the matrimonial home for more than five years ago.

In the end, I grant the Petitioner the orders sought. Consequently the marriage between the Petitioner and the Respondent is hereby ordered dissolved. A *decree nisi* is issued to be made absolute upon an application after the expiry of six months from the date hereof. I award the Petitioner costs of the cause.

Dated signed and delivered in open court this 30th day of May, 2014.

J. K. SERGON

JUDGE

In the presence of:

- Mutai holding brief for Motanya for Petition
- Respondent: present in person