

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

DIVORCE CAUSE NO. 37 OF 2013

Y A O.....PETITIONER

VERSUS

J L.....RESPONDENT

JUDGMENT

The petitioner **Y A** has filed this petition dated 20th May, 2013 seeking the dissolution of her marriage to the respondent **J L**. The respondent despite having been duly served failed and/or declined to either enter appearance or file a reply to the petition. The matter proceeded as an undefended cause. The petitioner gave her evidence on 7th November, 2013. She told the court that she and the respondent got married on 24th November, 2008 at the Registrar's Office in Nakuru. The marriage certificate serial number [Particulars withheld] is proof of this fact. Their union was blessed with one child a son born on 29th September, 2007. The couple lived in Nakuru until 2009, then they moved to Machakos and later to Mikindani in Mombasa. The petitioner testified that their marriage was troubled. The respondent was violent and frequently assaulted her. He also abused her calling her a prostitute. In April, 2010 the couple separated. The petitioner stated that the respondent failed to make provision for the upkeep of the child leaving her to provide for his needs single handedly. The evidence of the petitioner is not controverted at all. She states that efforts at reconciliation have failed. She now seeks a divorce.

The respondent has kept away from his matrimonial home, his wife and his child since April, 2010. This amounts to desertion as provided by section 8(1)(b) of the Matrimonial Causes Act. By leaving the petitioner to provide alone for the child, the respondent has acted negligently. The couple have lived apart since the year 2010. No meaningful union can be said to exist where parties live apart. It is clear that the respondent has chosen to abandon his responsibilities as a father and as a husband. I find that the grounds of cruelty and desertion have been sufficiently proved. I do 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 May, 2014.

M. ODERO

JUDGE

In the presence of:

Mr. Mkan for Petitioner

Court Clerk Mutisya