



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**

**AT MERU**

**DIVORCE NO. 2 OF 2013**

**K L B.....PETITIONER**

**VERSUS**

**C R.....RESPONDENT**

**J U D G M E N T**

1. The petitioner through a petition dated 31<sup>st</sup> October, 2013 sought that a marriage solemnized between himself and C R, the respondent be dissolved, that the respondent be condemned to bear costs of this cause and that court do grant any further relief that it may deem fit and just.
2. The petition was served upon the respondent as per affidavit of service dated 11<sup>th</sup> December, 2013 and filed on 9<sup>th</sup> January, 2014 but the respondent did not appear or file an answer to the petition.
3. That by application dated 18<sup>th</sup> February, 2014 the petitioner sought that court certify the pleadings are in order and do issue directions as to the hearing of the divorce cause. On 25<sup>th</sup> March, 2014 Registrar's certificate was issued, the cause directed to proceed as undefended cause and a hearing date be taken at the registry. Subsequently the cause was set down for hearing on 28<sup>th</sup> May, 2014.
4. During the hearing of the cause the petitioner gave evidence and called no witnesses. The petitioner produced certificate of marriage as exhibit 1 showing that the petitioner and the respondent married on 11/8/2011 before the District Commissioner's Office in Imenti North under the Marriage Act. The petition was filed on 31/10/2013, after a period of 2 years and 2 months from the date of marriage. The issue for consideration is whether the petitioner has established sufficient grounds for granting the petition as prayed.
5. The petitioner in his evidence testified that he filed the petition on 31/10/2013 without leave of the court to file the petition before the expiration of the three (3) years.
6. The petitioner testified that he cohabited with the respondent as man and wife at Makutano in Meru and were blessed with one issue namely M, a boy born on 10/3/2013 who now stays with the respondent at unknown place to the petitioner. He averred that the respondent deserted him in November, 2012 and has been away for now 1 year and 7 months and that she was not trustworthy. He stated that he thought she had an affair with someone unknown to him. He averred that was cruelty to him and prayed for the divorce to be granted with costs to him.
7. The petitioner in his petition has not given the particulars of the alleged desertion. The petitioner

in his petition avers that the respondent deserted the matrimonial home in December, 2012. The petition was filed in less than 1 year since the alleged desertion. The period of alleged desertion being of less than one year that cannot be termed as desertion as it is less than the required period of 3 years to prove a case of desertion. On the grounds of adultery and cruelty the petitioner did not give particulars of cruelty and/or of adultery in his petition nor in his evidence. The failure to give such particulars leads this court to the conclusion that the petitioner's evidence fell far short from proving the matrimonial offences alluded to in the petition; even in a matter that proceeded exparte.

8. The petition herein as pointed out earlier on in this judgment was filed before 3 years elapsed since the marriage between the petitioner and the respondent was celebrated. The petitioner proceeded to obtain registrar's certificate even before he had sought court's leave to present the petition before the expiration of 3 years as per Section 6(1) of the Matrimonial Causes Act(Cap.152)(repealed) Laws of Kenya, which provided:-

***"No petition for divorce shall be presented to the court unless at the date of the presentation of the petition three years have passed since the date of the marriage."***

9. The instant cause was filed on 31<sup>st</sup> October, 2013 before the marriage Act 2014 came into operation on 20<sup>th</sup> May, 2014. That the cause was heard on 28<sup>th</sup> May, 2014 after the commencement of the Marriage Act, 2014 and as the cause was filed before the commencement of the aforesaid Act, I find that the Marriage Act,2014 is not applicable in this cause; that notwithstanding, Section 66(1) of the Marriage Act, 2014 prohibits any suit for dissolution of marriage from being filed unless 3 years have elapsed since the celebration of the marriage. The said Section is a replica of Section 6(1) of the Matrimonial Causes Act(repealed).

10. In view of the foregoing and the petition having been filed without court's leave as per Section 6(1) of the Matrimonial Causes Act(Cap.152)(repealed) Laws of Kenya, I find and hold that the petition is incompetent and the same is struck out with no order as to costs.

DATED, SIGNED AND DELIVERED AT MERU THIS 26<sup>TH</sup> DAY OF JUNE, 2014.

**J. A. MAKAU**

**JUDGE**

DELIVERED IN OPEN COURT IN PRESENCE OF:

1. The petitioner – present

**J. A. MAKAU**

**JUDGE**