



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**DIVORCE CAUSE NO. 87 OF 2012**

**K M.....PETITIONER**

**VERSUS**

**H W N .....RESPONDENT**

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

The Petitioner and the Respondent were married on 17th March 2006 at the Registrar's Office in Nairobi. The marriage was celebrated under the **Marriage Act**. After the celebration of the marriage, the Petitioner and the Respondent cohabited together as husband and wife at Racecourse within the City of Nairobi. The marriage has been blessed with one (1) child. According to the Petitioner, the Respondent had committed the matrimonial offence of desertion. He averred that since April 2007, the Respondent had deserted the matrimonial home and lived elsewhere. Despite requests by the Petitioner and the elders for the Respondent to return to the matrimonial home, the Petitioner avers that the Respondent had failed to heed the requests. It was for the above reasons that the Petitioner formed the view that his marriage to the Respondent had irretrievably broken down with no possibility of salvage. He therefore urges the court to dissolve the marriage.

The Respondent was served with the Petition for divorce. She entered appearance. However, she did not file any papers in answer to the petition. The Deputy Registrar of the court issued a Registrar's certificate certifying that this cause was a suitable one to be disposed of by this court as an undefended divorce cause. This was after the Registrar was satisfied that the Respondent had been duly served but had failed to file any papers in answer to the petition for divorce. During the hearing of the petition, this court heard oral evidence adduced by the Petitioner. He essentially reiterated the contents of his petition for divorce. He testified that although the Respondent left with the child of the marriage, he still maintains the child. The Petitioner told the court that every effort at reconciliation had not borne fruit and therefore the only thing remaining is for this court to dissolve the marriage.

This court has carefully considered the facts of this cause. It was clear to this court that indeed the marriage between the Petitioner and the Respondent had irretrievably broken down with no possibility of salvage. The Petitioner and the Respondent have been separated for more than seven (7) years. All attempts at reconciliation had failed. According to the Petitioner, the Respondent has indicated that she has no intention of returning to the said matrimonial home. The Petitioner proved the matrimonial offence of desertion to the required standard of proof on a balance of probabilities.

In the premises therefore, the marriage celebrated between the Petitioner and the Respondent on 17<sup>th</sup> March 2006 at the Registrar's Office in Nairobi is hereby dissolved. Decree nisi dissolving the said marriage is hereby issued. The decree nisi shall be made absolute thirty (30) days from the date of this judgment. There shall be no orders as to costs.

**DATED AT NAIROBI THIS 26<sup>TH</sup> DAY OF JUNE, 2014**

**L. KIMARU**

**JUDGE**