



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**DIVORCE CAUSE NO. 17 OF 2013**

**M W.....PETITIONER**

**VERSUS**

**C M.....RESPONDENT**

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

The Petitioner and the Respondent were married on 25<sup>th</sup> May 1974 under the **African Christian Marriage and Divorce Act**. The marriage was celebrated at Consolata Catholic Centre in Wajir District. After the celebration of the marriage, the Petitioner and the Respondent cohabited together as husband and wife in Wajir, Kenya, in England and in Canada. They finally settled in Karen in Nairobi. The marriage was blessed with two (2) children. Both are now adults. According to the Petitioner, the Respondent had committed the matrimonial offence of desertion. He averred that since 20<sup>th</sup> October 1998, the Respondent deserted the matrimonial home and lived elsewhere. It was for this sole reason that the Petitioner was asking the court to be divorced from the Respondent.

The Respondent was served with the notice of appearance together with a copy of the petition for divorce. She entered appearance but failed to file any papers in answer to the petition for divorce. The Deputy Registrar of this court issued a certificate certifying this cause as suitable one to be disposed of by this court as an undefended divorce cause. During the hearing of this petition, this court heard oral evidence adduced by the Petitioner. He testified that he had been separated from the Respondent since 20<sup>th</sup> October 1998 when the Respondent traveled to India. He told the court that when the Respondent came back, she went to live in Watamu in Malindi and did not return to the matrimonial home. The Respondent told the court that a consent on the division of matrimonial property between the Respondent and the Petitioner had been filed in court. He urged the court to adopt the same as an order of court. The Petitioner was of the view that the only thing remaining was for this court to dissolve the marriage.

This court has carefully considered the facts of this divorce 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 fifteen (15) years. It was apparent from the testimony of the Petitioner (which was uncontroverted), that the Petitioner and the Respondent have each gone their separate ways. The Petitioner proved the matrimonial offence of desertion to the required standard of proof.

In the premises therefore, the marriage celebrated between the Petitioner and the Respondent on 25<sup>th</sup> May 1974 at Consolata Catholic Centre in Wajir District 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.

The consent of the Petitioner and the Respondent in respect of division of matrimonial property filed in court on 14<sup>th</sup> November 2013 is adopted as the order of the court. There shall be no orders as to costs.

**DATED AT NAIROBI THIS 31<sup>ST</sup> DAY OF JULY, 2014**

**L. KIMARU**

**JUDGE**