



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MOMBASA**  
**DIVORCE CAUSE NO. 1 OF 2014**

**J M M.....PETITIONER**

**VERSUS**

**D M M.....RESPONDENT**

**JUDGMENT**

The petitioner **J M M** has filed in court this petition dated 7<sup>th</sup> January, 2014 seeking the dissolution of his marriage to the respondent **D M M**. The respondent was duly served with the petition as well as a summons to enter appearance. She did not file any papers in reply. The matter therefore proceeded as an undefended cause.

The petitioner testified before court on 23<sup>rd</sup> June, 2014. He told the court that he and the respondent got married on 28<sup>th</sup> June, 2006 at the Registrar's office in Mombasa. The annexed copy of their marriage certificate serial number [*particulars withheld*] is sufficient proof of the fact of the marriage. They bore one child called L M.

The petitioner told the court that he works for the Kenya Navy and as such was often away from the matrimonial home on duty. On one occasion in January/February, 2009 he returned home and caught the respondent in a bar with some men. When he questioned her she left the matrimonial home taking the child with her. To date the respondent has never returned and the couple have lived separately.

As stated earlier the respondent chose to file no reply to this petition. The evidence of the petitioner therefore remains unchallenged and uncontroverted. As a court I have no reason to doubt his veracity.

Section 66(2) of the Marriage Act, 2014 provides for the grounds upon which a civil marriage may be dissolved. One of such grounds is that of desertion by one spouse for at least three (3) years. The respondent left the matrimonial home in January/February, 2009. Upto January, 2014 when this petition was filed she had not returned – a period of five (5) years. In terms of section 66(b)(d) of the same Marriage Act it is clear that the marriage has irretrievably broken down. I am satisfied that this ground of desertion has been proved. I therefore 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 1<sup>st</sup> day of August, 2014.**

**M. ODERO**

**JUDGE**

In the presence of:

No appearances