



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI**  
**DIVORCE CAUSE NO. 166 OF 2006**

**R H.....PETITIONER**

**VERSUS**

**E W K.....RESPONDENT**

**JUDGMENT**

1. This divorce petition is dated 20<sup>th</sup> November 2006 and was filed in court on 22<sup>nd</sup> November 2006. The petitioner thereby prays that the marriage between him and the respondent be dissolved.
2. The principal ground upon which the petition is based is desertion. The particulars of desertion are set out in paragraph 9 of the petition. It is averred that the respondent left the matrimonial home at **[particulars withheld]**, Switzerland, with the issue of the marriage to travel to Kampala, Uganda, to look for business opportunities. In 2001, she left Uganda and travelled to the United States of America (USA) to complete her studies and returned to Nairobi, Kenya, in 2005. The petitioner states that the respondent did not accompany him to Rwanda, Ecuador and Peru in 2001, 2004 and 2006, respectively, when the petitioner was transferred to those stations by his employer. It is now seven years since the alleged desertion.
3. In response to the petition, the respondent filed an answer and cross-petition on 24<sup>th</sup> January, 2007 in which she denies the petitioner's allegation of desertion and states that the petitioner intentionally and willfully sent her to Kampala, Uganda, with the alleged intention that the respondent would set up a new business in Kampala and that the petitioner would send her funds to commence the business and later the petitioner would join her in Kampala. It is her case that the petitioner never sent her the funds to start the business nor did he join her in Kampala or in Kenya or at all.
4. In her cross petition, the respondent has accused the petitioner of desertion and adultery. The particulars of desertion are that the petitioner did not make any effort to join the respondent in Kampala, and when approached by the respondent flatly refused to travel to Kampala and stated that he had no interest in her. She avers that the petitioner travelled to Rwanda, Ecuador and Peru in 2001, 2004 and 2006 and completely refused to be accompanied by the respondent. She states that it was in 2001 that it became clear to her that the petitioner had lost all interest in her, and did not want her company, and it was upon that that she decided to go to the USA to pursue her studies.
5. The particulars of adultery are that while in Rwanda in 2001, the petitioner befriended a Rwandese woman named **[particulars withheld]**, with whom he has committed adultery, and with whom they have had two children. The petitioner is said to live with the Rwandese woman in Peru where he now works.

6. It is the respondent's case that since the petitioner deserted the respondent and started living with the Rwandese woman, the petitioner's support for the respondent and the only issue of the marriage has been intermittent, irregular and insufficient for the upkeep, maintenance and subsistence of both mother and child.
7. The respondent cross-petitions for the dissolution of the marriage. She prays that the marriage between them be dissolved and orders for payment of alimony, maintenance and subsistence of the Respondent and the issue of the marriage be made.
8. The petitioner filed a reply and answer to cross petition on 21<sup>st</sup> February 2007. In his reply, the petitioner denies the particulars of desertion and puts the respondent to strict proof. He also denies the particulars of adultery and puts the respondent to strict proof.
9. The petitioner avers that he remits monthly maintenance of \$2,800 to the respondent to cater for her accommodation (and that of the issue) food, medical expenses, entertainment and fuel for the family car. It is his averment that he pays a further \$1,000 annually for the issue's clothing and school fees at a private high cost school and caters for travelling expenses for the issue when she has to travel out of the country for holidays.
10. It is the Petitioner's case that he and the respondent should have joint responsibility in the raising of the issue of the marriage. He contends that the respondent's counter-claim should be struck out as the same is unreasonable and an abuse of the court process.
11. The petitioner testified before Gacheche J. He gave sworn testimony to the effect that the respondent and the petitioner got married on 17<sup>th</sup> May 1997 at the Don Bosco Shrine in Nairobi. He stated that the couple had a daughter, born in October 1997. They initially resided in Nairobi, and then moved to Kampala in April 1998 till 1999 when they moved to Geneva Switzerland and lived in **[particulars withheld]** from April 1999 to December 1999. The respondent was sold to have left for to Kampala, Uganda to pursue her business opportunities and also because she had difficulties in settling down in Switzerland because of differences in lifestyles. Although, the respondent had a return ticket, she decided to stay in Kampala. The respondent later moved to USA with the issue of the marriage.
12. The petitioner also testified that he had always provided for his family and that he sends to the respondent \$2800 per month. It was his case that he caters for his daughter's school fees at **[particulars withheld]** School where the school fees stand at about Kshs. 700,000.00 per year, that he also provided a medical cover for **[particulars withheld]** as well as an annual sum of \$1, 500 for her maintenance. The \$ 2,800 caters for rent, and maintenance of the Respondent's motor vehicle.
13. I note from the record, that the respondent did not testify at the hearing, and since her allegations have not been tested, the veracity of her claims was not proved.
14. The respondent left the petitioner in 2001, and the couple has not lived together since. This state of affairs prompted the petitioner to move the court for dissolution of marriage on the ground of desertion. For desertion to constitute a ground for divorce, it must run for a period of at least three years immediately preceding the presentation of the petition for divorce. By the time the petition was presented in court in 2006, the period of three years from 2001 had expired. In the circumstances of the instant case, the ingredients of desertion have been satisfied and this court finds the matrimonial offence of desertion duly proved.
15. Having found so, this court hereby pronounces a decree of divorce, and orders that the marriage between the petitioner and respondent solemnized at the Shrine of Mary Help of Christians in the Nairobi District on the 17<sup>th</sup> May 1997 is hereby dissolved. *Decree nisi* shall issue forthwith, the same shall be made absolute, upon application, after expiry of thirty (30) days of the date hereof.

**DATED, SIGNED and DELIVERED at NAIROBI this 26<sup>th</sup> DAY OF September 2014.**

**W. MUSYOKA**

**JUDGE**

**In the presence of Mrs. Thongori for Mrs. Otanlo advocate for the petitioner.**

**In the presence of Mr. Kimani advocate for the respondent.**