

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

DIVORCE CAUSE NO. 29 OF 2013

C W M.....PETITIONER

VERSUS

E N M.....RESPONDENT

JUDGMENT

The petitioner **C W M** has filed this petition dated 25th April, 2013 seeking the following orders:

- “(a) Dissolution of the marriage.**
- (b) Custody of the child and the respondent to provide maintenance.**
- (c) Such further relief as may be just.**
- (d) Costs of the petition.”**

The respondent was duly served in person with both the petition as well as a summons to enter appearance. He failed to file any reply. The matter therefore proceeded as an undefended cause.

The petitioner testified before the court on 22nd September, 2014. She told the court that she and the respondent got married on 23rd September, 2002 at the Office of the Registrar in Mombasa. The certified copy of their marriage certificate serial number **[particulars withheld]** provides proof of that fact of the marriage. After the marriage the couple lived in Thika. They were blessed with a daughter called ‘*M W*’ born on 19th January, 2004. The petitioner tells the court that from the year 2007 the couple have lived apart. She states that the respondent moved out of their rented accommodation and went to work in Sudan. When he returned from Sudan the respondent did not come to their matrimonial home and to his family. He went to live in a different house in Kasarani. Since 2007 the petitioner has provided for both herself and the child single handedly. She has now come to court seeking a divorce.

The evidence of the petitioner is uncontroverted and this court has no reason to disbelieve her testimony. It is quite in order for a man to seek job opportunities where they are available thus for the respondent to travel to Sudan in search of work cannot be faulted. However his decision to stay away from the matrimonial home even when he returned in 2008 is curious. The respondent’s decision to live in a house separate from the matrimonial home where his wife and child lived is a clear act of desertion. Section 66(2) of the Marriage Act 2014 provides for desertion as one of the grounds upon which a marriage may be dissolved. Section 66(b) (e) provides that a marriage can be said to have irretrievably broken down where

“the spouses have been separated for at least two years, whether voluntary or by decree of the court.”

This is a case where the spouses have been separated from the year 2007 a period of seven (7) years. The marriage has clearly broken down. I therefore allow this petition for divorce. Decree nisi to issue to be made absolute within three (3) months of today’s date.

Dated and delivered in Mombasa this 28th day of October, 2014.

M. ODERO

JUDGE