

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

DIVORCE CAUSE NO. 242 OF 2012

BETWEEN

V M W.....PETITIONER

AND

E K K.....RESPONDENT

JUDGEMENT

1. Marriage was celebrated between the parties herein on 26th October 2007 at the Redeemed Gospel Church, Kariobangi South, in Nairobi. A certificate of marriage serial number *[particulars withheld]* was issued to them in accordance with the African Christian Marriage and Divorce Act. The couple thereafter cohabited in Nairobi, Kenya, as husband and wife. The couple was not blessed with issue.

2. The petition in this matter was filed in court on 20th December 2012. The petitioner accuses the respondent of desertion and cruelty. She is said to have had deserted the matrimonial home on divers dates after disagreements with the petitioner but she would come back. However after leaving on 28th October 2012, she never came back.

3. On cruelty, the petitioner has given detailed particulars of the alleged acts of cruelty meted out on him by the respondent. She is accused of insulting the petitioner in the presence of visitors, refusing members of the petitioner's family to stay with them and preferring members of her own family to those of the petitioner, treating the petitioner with contempt and disrespect in the presence of his friends and relatives who would visit them, demanding that the petitioner drops all his leadership positions in church, denying him his conjugal rights, practising witchcraft, among others.

4. The petition was served on the respondent on 26th February 2013, as per the affidavit of service filed in the matter on 1st November 2013, sworn by a process server called Patrick Okwemba. She did not appear nor file answer to the petition. On 8th May 2014 the Deputy Registrar certified that the matter proceeds for hearing as an undefended cause. As there is no reply, the petitioner's allegations, as made in the petition, remain uncontroverted.

5. The petitioner testified on 2nd October 2014 and gave vent to the allegations made in his petition. No counter evidence was given by the respondent, and therefore the petitioner's story was not controverted.

6. I am satisfied from the recorded evidence that the respondent was cruel to the petitioner. She comes out from the evidence an aggressive person, who did not respect the petitioner. On desertion, I note that the petition was not brought outside the three years required in law.

7. It would appear to me that the marriage between the parties herein has irretrievably broken down. It would also appear to me that there has been no collusion between the petitioner and the respondent in the bringing of these proceedings. There is also no evidence that the petitioner has condoned the cruelty proved in the matter.

8. I hereby dissolve the marriage celebrated between the petitioner and respondent on 26th October 2007. Decree *nisi* shall issue forthwith and shall be made absolute after thirty (30) days. There will be no orders as to costs.

DATED, SIGNED and DELIVERED at NAIROBI this 11th DAY OF December 2014.

W. MUSYOKA

JUDGE

In the presence of Mr. Ombasa advocate for the applicant.