

REPUBLIC OF KENYA

High Court at Mombasa

Matrimonial Case 46 of 2012

GERMAINE MARIE ROSE VENZAC.....PETITIONER

VERSUS

RAPHAEL HABİYAREMYE.....RESPONDENT

JUDGMENT

This is the petition filed on 11th April, 2012 filed by **GERMAINE-MARIE ROSE VENZAC** seeking the dissolution of her marriage to **RAPHAEL HABİYAREMYE**. The respondent was duly served with the petition as well as the summons but he failed to either enter an appearance or to file any reply to the petition. The matter therefore proceeded as an undefended cause.

The petitioner in her evidence told the court that she and the respondent got married on 19th May, 1979. She produces as an exhibit in court a certified copy of her marriage certificate **Pexb1**. The couple were blessed with three children who are now all adults. In 1986 the petitioner and the respondent lived in France. From 1993–1998 they moved and lived in Dar-es-salaam. In 1998 the couple decided to move with their children to Reunion Islands. The petitioner went ahead with the children but the respondent later declined to join his family there. The couple have therefore been separated since 1998. It is for this reason that the petitioner now seeks a divorce.

The petitioner and the respondent got married in May, 1979. This petition was filed in court on 11th September, 2012 a full thirty three (33) years after the marriage. Thus this petition fully complies with section 6(2) of the Matrimonial Causes Act and is properly before this court.

It would appear that the couple had a peaceful marriage until 1998 when the decision was made to move to Reunion Islands. The petitioner told the court that this was a joint decision and since the respondent has opted not to participate in these proceedings her evidence in this regard is neither challenged nor controverted. The petitioner states that she moved first with their children to settle in the Reunion Islands whilst the respondent remained in Dar-es-salaam to wind up his business affairs. However, even when this was accomplished the respondent declined to travel to join his family. He remained in Dar-es-salaam. The petitioner told the court that she pleaded with the respondent to come and join the family but he was adamant. Even her offer to return to Tanzania bore no fruit. Once again this evidence remains uncontroverted. I have no reason to doubt the petitioner’s veracity.

By refusing to move to join his family at the location where the couple had decided to set up their home the respondent was constructively deserting his wife. No meaningful marital life can exist where the couple lives in different countries. The respondent’s willful refusal to join his wife and children amounted to desertion. Section 8(b) of the Matrimonial Causes Act provides that one of the grounds for divorce is spouse who deserts his partner for a period of at least three (3) continuous years. In this case the desertion commenced in 1998, fourteen (14) years ago and is still continuing. I am satisfied that the ground of desertion has been proved. As such I do allow this petition for divorce. Decree nisi to issue forthwith to be made absolute within a period of three (3) years.

No orders on costs.

Dated and delivered in Mombasa this 11th day of February, 2013.

M. ODERO

JUDGE

In the presence of:

Ms. Muthero for Petitioner

Court Clerk Mutisya