



REPUBLIC OF KENYA

High Court at Mombasa

Divorce Cause 26 of 2012

A.N.M. PETITIONER

VERSUS

E.L.W. RESPONDENT

JUDGMENT

This is the petition brought by **A.N.M.** (hereinafter referred to as ‘*the petitioner*’), seeking the dissolution of her marriage to **E.L.W.** (hereinafter referred to as ‘*the respondent*’). The petitions and summons were duly served on the respondent on 6th June, 2012. The respondent did not enter appearance and did not file any reply to the petition. The matter was listed for hearing as an undefended cause on 13th February, 2013. Once again Notice of the hearing date was duly served on the respondent but he failed to appear on the said date. The matter therefore proceeded in his absence.

The petitioner told the court that she and the respondent got married on 22nd June, 2001 at the office of the Registrar in Mombasa. She produces a copy of her marriage certificate serial No. 93010 as proof of this fact **Pexb1**. Their union was blessed with one child, a daughter born on 19th December, 2002. The petitioner told the court that the couple lived as man and wife in P[...]in Mombasa. In March, 2003 the respondent left the matrimonial home following a disagreement and never returned to-date. The petitioner remained in Mombasa with their child whom she has continued to maintain and to raise single handedly.

Section 6(1) of the Matrimonial Cause Act requires that three (3) years elapse after the date of marriage before a petition for divorce may be filed in court. In this case the parties got married in June, 2001 and this petition was filed at the Mombasa High Court on 30th May, 2012 a full eleven (11) years **after** the marriage. I therefore find that this petition complies with section 6(1) and is properly before the court.

The various grounds upon which a divorce may be granted in Kenya are contained in section 8(1) of Cap 152. Section 8(1)(b) provides:

“8(1) A petition for divorce may be presented to the court either by the husband or the wife on the ground that the respondent

(a)

(b) Has deserted the petitioner without cause for a period of at least three years immediately preceding the presentation of this petition.....”

In her evidence the petitioner told the court that in March, 2003 the couple had a disagreement. This is

common to all marital unions. Following that disagreement the respondent walked out of the matrimonial home and had not returned by the time this petition was being filed. The evidence of the petitioner in this regard was uncontroverted since as stated earlier the respondent though fully aware of these proceedings opted not to participate in the same.

Therefore if the respondent had any valid reason or cause to walk away from his wife and child he has chosen not to share those reasons with the court. As such the court can only conclude that such desertion was both deliberate and without just cause. The couple have lived apart from March, 2003 to-date. That is a period of about eight (8) years well above three (3) year time frame provided for by section 8(1)(b). I further note that the respondent has on all occasions been served in Webuye where he now resides. It is clear that he has no intention of returning to Mombasa. I am satisfied that the ground of desertion has been proved. As such I allow this petition for divorce. Decree nisi to issue to be made absolute three (3) months from today's date.

Dated and delivered at Mombasa this 18th day of March, 2013.

M. ODERO

JUDGE

In the presence of:

Mr. Tolle h/b Mr. Maosa for the Petitioner

Court Clerk Mutisya