

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

DIVORCE CAUSE NO.173 OF 2011

C S.....PETITIONER

VERSUS

D C K S.....RESPONDENT

JUDGMENT

The Petitioner and the Respondent were on 26th July 1991 married under the **Marriage Act**. The marriage was celebrated at the Nairobi National Park, Nairobi. The marriage was blessed with two (2) issues born on 26th October 1991 and 22nd November 1993. According to the Petitioner, he cohabited with the Respondent as husband and wife at their matrimonial home in Karen until October 1998 when the Respondent left the matrimonial home and moved to a guest house erected in Ngong View Estate. The guest house is family property owned by the Petitioner. According to the Petitioner, the Respondent had committed the matrimonial offence of desertion. He averred that since October 1998, the Respondent had deserted the matrimonial home and lived elsewhere in Nairobi before leaving the country in September 2003. It was for this sole reason that the Petitioner was asking the court to be divorced from the Respondent.

The Respondent was served with the notice of appearance together with a copy of the petition for divorce. She did not enter appearance and neither did she file any papers in answer to the petition for divorce. The Deputy Registrar of this court issued a certificate certifying this cause as a suitable one to be disposed of by this court as an undefended divorce cause. During the hearing of this petition, this court heard oral evidence adduced by the Petitioner. He testified that he had been separated from the Respondent since October 1998 when the Respondent left matrimonial home to reside in another property that the family owned. He stated that the Respondent left the two (2) children of the marriage under his custody but retained visitation rights. He explained that the two children of the marriage are now adults and are now residing out of the country. The Respondent also is resident out of the country and currently resides in New York, United States of America. Before that, the Respondent had lived in Port Elizabeth in South Africa. The Petitioner told the court that any effort at reconciliation had not borne fruit and therefore the only thing remaining is for this court to dissolve the marriage.

This court has carefully considered the facts of this cause. It was clear to this court that indeed the marriage between the Petitioner and the Respondent had irretrievably broken down with no possibility of salvage. The Petitioner and the Respondent have been separated for more than fifteen (15) years. All attempts at reconciliation had failed. It was apparent from the testimony of the Petitioner (which was uncontroverted), that the Petitioner and the Respondent have each moved on with their respective lives. The Respondent is no longer a resident of this country. The Petitioner proved the matrimonial offence of desertion to the required standard of proof.

In the premises therefore, the marriage celebrated between the Petitioner and the Respondent on 26th July 1991 is hereby dissolved. Decree nisi dissolving the said marriage is hereby issued. The decree nisi shall be made absolute thirty (30) days from the date of this judgment. There shall be no orders as to costs.

L. KIMARU

JUDGE

DATED, COUNTERSIGNED AND DELIVERED ON 27TH DAY OF JUNE 2013.

W. MUSYOKA

JUDGE