

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

DIVORCE CAUSE NO.165 OF 2011

A N W.....PETITIONER

VERSUS

N L.....RESPONDENT

J U D G M E N T

The Petitioner and the Respondent were married on 2nd June 2009. The marriage was solemnized at the Registrar's office in Nairobi under the **Marriage Act**. According to the Petitioner, he had cohabited with the Respondent for some time prior to formalizing the marriage. The marriage has not been blessed with any issues. According to the Petitioner, the Respondent left the matrimonial home soon after the celebration of the marriage. The Respondent relocated to her home country, the United States of America. Despite request by the Petitioner for the Respondent to return to their matrimonial home, the Petitioner avers that the Respondent has failed to pay heed to the request. The Petitioner averred that since 26th June 2009 when the Respondent left the matrimonial home, she had not returned to the said matrimonial home. It was for the above reasons that the Petitioner formed the view that his marriage to the Respondent had irretrievably broken down with no possibility of salvage. He asks the court to grant his petition for divorce.

The Petitioner sought the leave of this court to file the petition for divorce before the expiry of the statutory period of three (3) years. The application was allowed. The Deputy Registrar of this court issued a Registrar's certificate certifying that this cause was a suitable one to be disposed of by this court as an undefended divorce cause. This was after the Registrar was satisfied that the Respondent had been duly served but had failed to enter appearance or filed any papers in answer to the petition for divorce. During the hearing of this petition this court heard oral evidence adduced by the Petitioner. In his evidence, the Petitioner essentially reiterated the contents of the petition for divorce. After carefully considering the facts of this case, it was clear to this court that the Petitioner had indeed established that the Respondent committed the matrimonial offence of desertion. The Respondent left the matrimonial home less than a month after the formal celebration of their marriage. She has since not returned to the matrimonial home. It is now four (4) years since the Respondent left the matrimonial home. According to the Petitioner, the Respondent told him that she had no intention of returning to the matrimonial home. In the premises therefore, it is clear that the Petitioner proved his case that his marriage to the Respondent had irretrievably broken down with no possibility of salvage.

This court will allow the petition for divorce. The marriage between the Petitioner and the Respondent which was solemnized on 2nd June 2009 at the Registrar's Office in Nairobi is hereby dissolved. Decree nisi dissolving the said marriage is hereby issued. The said decree nisi shall be made absolute thirty (30) days from the date of this judgment. There shall be no orders as to cost.

L. KIMARU

JUDGE

DATED, COUNTERSIGNED AND DELIVERED ON 20TH DAY OF JUNE 2013.

W. MUSYOKA

JUDGE