



REPUBLIC OF KENYA
IN HIGH COURT OF KENYA

AT MOMBASA

DIVORCE CAUSE NO. 53 OF 2012

E S A. PETITIONER

VERSUS

D J D. RESPONDENT

JUDGEMENT

Before court is the Petition dated 9th August 2013 filed by **E.S.O.** (hereinafter referred to as '*the Petitioner*') in which she seeks the following orders: -

- “(i) That the marriage of the Petitioner and the Respondent be dissolved.***
- ii. That the Respondent pays costs of the Petition.***
- iii. That the Petitioner may have such further and/or other relief as this Honourable Court may deem just.”***

The Respondent **D.J.D.** did receive service of the Petition and consequent thereon his advocate did file in court a Memorandum of Appearance dated 21st December 2012. However no answer to the Petition was filed. The pleadings were found to be in order and the matter therefore proceeded as an undefended cause.

The Petitioner who testified in person before this court on 4.9.2013 told the court that she and the Respondent got married on 9th March 2007 at the Registrar's Office in Mombasa. She produces a copy of the marriage certificate serial No. [Particulars withheld] as proof of this fact. After their marriage the couple proceeded to cohabit as man and wife in Mkomani in Mombasa. No children were born of their union. The Petition goes on to state that sometime in June 2008 the Respondent deserted the matrimonial home and returned to his home country of Ireland. Despite several e-mails and text messages from the Petitioner the Respondent has failed and/or declined to return to the matrimonial home in Kenya. Hence this Petition for divorce.

The Respondent as stated earlier did not file any answer to the Petition. It is pertinent to note that the Respondent's advocates on record were properly served with the hearing notice as evidenced by the Affidavit of Service filed in court on 4.7.2013. Despite such notice neither the Respondent nor his advocate bothered to attend court for the hearing. The court had no option but to proceed with the case in their absence.

The law governing marriage and divorce is found in the Matrimonial Causes Act, Cap 152, Laws of Kenya. Section 6 (1) of said Act provides: -

“No petition for divorce shall be presented to the court unless at the date of the presentation of the Petition three years have passed since the date of marriage ...”

In this case as evidenced by the marriage certificate the marriage between the Petitioner and Respondent took place ;in March 2007. This Petition was filed in court on October 2013 a full six (6) years after the marriage. As such I am satisfied that this Petition meets the condition set out in Section 6 (1) and is properly before this court.

Section 8 (1) of the Matrimonial Causes Act sets out the grounds upon which a divorce may be granted. Section 8 (1) (b) provides as follows: -

“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 -

(b) has deserted the Petitioner without cause for a period of at least three years immediately preceding the presentation of the Petition or ...”

The Petitioner has told the court that in June 2008 the Respondent left the matrimonial home and travelled back to his country Ireland. Her evidence in this regard remains uncontroverted. In abandoning his wife as he did the Respondent committed the matrimonial offence of desertion. No valid ground for such abandonment has been shown to exists. The Respondent left in June 2008 which was a full five (5) years before this Petition was filed in court. A marriage cannot subsist where there is no contact and/or communication between the parties as is the case here. There has been a deliberate and willful desertion of the Petitioner and the Respondent. I therefore allow this Petition and grant the order of divorce prayed for Decree Nisi to issue to be made absolute within three (3) months of today's date. Each party to meet their own costs.

Dated in Mombasa this 11th day of October 2013.

M. ODERO

JUDGE

In the presence of: -

Mr. Asige for Petitioner

No appearance for Respondent

Mr. Mutisya - Court Clerk

M. ODERO

JUDGE

11.10.2013