

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

DIVORCE CAUSE NO. 20 OF 2013

A A A.....PETITIONER

VERSUS

C C C T.....RESPONDENT

JUDGMENT

The petitioner **A A A** has filed this petition dated 19th June, 2013 seeking the dissolution of his marriage to the respondent **C C C T**. The respondent despite having been duly served with the petition failed to put in any appearance and failed to file any reply to the petition. The matter therefore proceeded for formal proof.

The petitioner told the court that he met the respondent in the year 2008. The two became friends and got married on 22nd October, 2009 at the Registrar's office in Mombasa. The copy of the Marriage Certificate serial No. *[Particulars withheld]* annexed to the petition provides proof of this fact. Section 6(1) of the Matrimonial Causes Act Cap 152 Laws of Kenya provides as follows:

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

In this case the petition was filed in court in June, 2013 a full four (4) years after the marriage which took place in October, 2009. I therefore find that this petition was filed in compliance with section 6(1) and is properly before the court.

The evidence from the petitioner is that the couple only cohabited for one (1) year as man and wife. They bore no children together. In the year 2010 the respondent deserted the matrimonial home and returned to her parents. The petitioner has testified that despite his best efforts to seek reconciliation all has failed. The respondent is not willing to return to the matrimonial home. A marriage clearly cannot exist where one party refuses to occupy the matrimonial home. The failure of the respondent to put in any reply to the petition means that the testimony of the petitioner remains uncontroverted. Section 8(b) of the Matrimonial Causes Act provides that a divorce may be granted where one spouse deserts the other without cause for a period of three (3) years. This is precisely the situation that prevails here. The respondent has deserted the petitioner and in the circumstances no marriage can be said to exist. I therefore allow this petition for divorce. Decree nisi to issue to be made absolute within three (3) months of today's date. No orders on costs.

Dated and delivered in Mombasa this 17th day of December, 2013.

M. ODERO

JUDGE

In the presence of:

Petitioner in person

Court Clerk Mutisya