



**E.K.O..... PETITIONER**

**VERSUS**

**A.L.L..... RESPONDENT**

**JUDGMENT**

This petition is dated 18<sup>th</sup> January, 2010 and was filed in Court on the same date. The Petitioner thereby seeks orders –

- 1. That the marriage between the parties be nullified or in the alternative be dissolved.***
- 2. That the Respondent be condemned to pay the costs of these proceedings.***
- 3. That such further or other relief that this Court may deem fit and proper be granted.***

The Petitioner’s case against the Respondent is that the parties got

married in December, 1988 and lived as husband and wife until 2003. By that time they had two sons. When the parties lived in (*particulars withheld*) in 1990, the Petitioner learnt that the Respondent had another marriage which had not been dissolved and that there were issues of the marriage. That marriage was celebrated in (*particulars withheld*), the Respondent’s homeland although the Petitioner knew that the Respondent had children, he had told her that he was not married to the mother of those children. During the subsistence of their marriage, the Petitioner had seen different love letters from different ladies which had been posted and also by of e-mail. The letters suggested that the Respondent was involved in sexual actions with those women. On one occasion in 2001, the Petitioner traveled to the USA for three months and when she came back, the house help had a detailed account of what the Respondent was doing during the Petitioner’s absence. There were overnight visits by various women. She had no reason to doubt that the Respondent was engaged in adultery and this being the era of HIV/AIDS, this caused her immense emotional distress. The children were also very upset by their father’s immoral behaviour and negative role modeling. Upon being questioned by the Petitioner, the Respondent failed and/or refused to offer any plausible explanation for the love letters or the stories the Petitioner had been told by the house help.

Sometime in the year 2003, the Respondent moved out from the matrimonial home, leaving the Petitioner with the children and since then he has refused and/or neglected to take any responsibility for the maintenance and upkeep of the issues of the marriage despite being financially capable of doing so and being present in Nairobi. This behaviour has caused the Petitioner immense mental anguish. It was her case that the spouses have not had any relationship as husband and wife since 2003 and nothing can salvage this marriage.

The Respondent, who was represented in Court by Counsel did not ask the witness any questions in cross-examination.

In his evidence, the Respondent told the Court that before he came to Kenya 30 years ago, he was married in his home country (*particulars withheld*). He came to Kenya on a job assignment. A long the line his

marriage in (*particulars withheld*) broke down and that gave him an opportunity to look for another wife. He testified that after the couple married, they got two children. He is an international translator and sometimes when he talks to his clients the Petitioner accuses him of talking to his girlfriends. As a result, they reside in the same house, the same bed, but they don't touch one another.

After considering the pleadings and the evidence in Court, I find that the Respondent's evidence is far outweighed by that of the Petitioner. The Petitioner impressed the Court as a witness of truth and her evidence is more credible than that of the Respondent. If it was true that the misunderstanding between the spouses arose from language barriers, the Respondent should have told the Petitioner as much long before the situation deteriorated thereby giving rise to this divorce petition. I believe the Petitioner when she says that the Respondent moved out on the family leaving her with the children which amounts to desertion within the scope of **Section 8 (1) (b)** of the **Matrimonial Causes Act**. Moreover, even if the parties reside in the same house, share the same bed but don't touch one another, as acknowledged by the Respondent amounts to constructive desertion in the eyes of the law.

I am constrained to find that these spouses have not lived together for 10 years now and it would be impracticable for them to resume cohabitation. I therefore find that the Respondent is guilty of the matrimonial offence of desertion for which the Petitioner is entitled to a divorce. I accordingly make the following orders –

- 1. The marriage between the Petitioner and the Respondent solemnized at the Registrar's office in Nairobi in December, 1988 be and is hereby dissolved.***
- 2. Decree nisi to issue.***
- 3. Decree nisi to become absolute after expiry of 90 days upon application by either of the parties.***
- 4. Each party to bear its own costs.***

Orders accordingly.

**DATED** and **DELIVERED** at **NAIROBI** this 22<sup>nd</sup> day of March, 2012.

**L. NJAGI**  
**JUDGE**