



I.N.W..... PETITIONER

VERSUS

C.A.O.O..... RESPONDENT

JUDGMENT

By this petition, which was dated and filed in Court on 19th August, 2011, the Petitioner prays for the following orders –

- 1. That the marriage between her and the Respondent be dissolved and a decree nisi do issue forthwith.**
- 2. This Honourable Court do give legal and actual custody of the issue of the marriage to the Petitioner herein.**
- 3. That the Respondent do bear the costs of this cause.**
- 4. Any such order that this Honourable Court may deem fit to grant.**

The Petitioner's case against the Respondent is that the latter has since the celebration of marriage deserted the Petitioner.

In spite of having been served with a notice to enter an appearance either in person by an Advocate, the Respondent neither entered appearance, nor filed an answer to the petition or a cross-petition. The hearing of the cause therefore proceeded *ex parte*.

In her sworn evidence in Court, the Petitioner told the Court that the couple was married in the Registrar's office in December, 2001. She produced a copy of the Certificate of Marriage as her exhibit No.1. The couple was blessed with one issue, a girl born in November, 1998.

It was the Petitioner's evidence that for 10 years during which the couple has been married, they lived together for only 3 years. He got a job in 2004 in Rwanda where he went and didn't come back until 2006. They never saw him again until November, 2007 when the parties stayed together until he left in June, 2008. When he came back, he looked downtrodden. He got another job in April, 2008 and lost it soon thereafter. He then left and has not come back since then. The Petitioner got information from their pastor that he went back to his parents. She has now established that the Respondent is indeed residing in Kenya with his mother and has no intention of coming back to the matrimonial home. It is her contention that the marriage between the parties has irretrievably broken down by reason of the aforesaid desertion and she therefore applies for an order of divorce.

It is not possible to add anything to this petition. It speaks for itself, where a spouse leaves the matrimonial home and disappears without trace for more than 3 years while still in the country, one cannot but conclude that such a marriage has irretrievably broken down and that all the Petitioner is left with is a shell of a non-existent marriage. That being the case in this matter, I find that the Respondent has committed the matrimonial offence of desertion, that he is not interested in this marriage anymore, and

that it is in the best interests of both spouses that they should call it a day and divorce. I therefore find that the Petitioner is entitled to the prayers sought and hereby order that –

1. *The marriage between the Petitioner and the Respondent herein contracted in December, 2001 be and is hereby dissolved.*
2. *A decree nisi to issue.*
3. *The decree nisi to become absolute after 90 days upon application by any of the parties.*
4. *The Petitioner to have the legal custody of the child of the marriage.*
5. *Each party to bear its own costs.*

It is so ordered.

DATED and DELIVERED at NAIROBI this 22nd day of March, 2012.

L. NJAGI
JUDGE