



M.W.M..... PETITIONER

VERSUS

K.N..... RESPONDENT

JUDGMENT

By a petition dated and filed in Court on 26th August, 2011, the Petitioner in this matter prays for judgment against the Respondent for orders that –

- (a) *The marriage between the Petitioner and the Respondent be dissolved.***
- (b) *Costs of this suit be borne by the Respondent.***
- (c) *Any other relief that this Honourable Court may deem fit and proper to grant in the circumstances.***

According to the petition, which is undefended, the Petitioner accuses

the Respondent of having committed the matrimonial offences of desertion and adultery. According to the Petitioner and going by her sworn testimony in Court, the couple married in June, 1999. She produced a copy of their Marriage Certificate to that effect. Their union was blessed with 2 children whose birth certificates the witness also produced in evidence. She also told the Court that she had one child born before her union with the Respondent.

From December, 2002, the Respondent started waking up very early in the morning and complaining. He also started cooking for himself and threatened that he would go back to Japan, his home country. After he left, he never supported the children again.

In January, 2009, the Petitioner went to Japan only to discover that the Petitioner had been married before she met him, and that he had 2 grown up children, one boy and one girl. She had not known this fact and, while in Tokyo, where the Respondent lived, he treated her very badly. He refused to assist the Petitioner's children, and even today he does not support them. On that basis, the Petitioner asks the Court to dissolve this marriage and nothing more.

After considering the pleadings and the Petitioner's oral testimony, I note that on 15th September, 2011 the Respondent was duly served with the petition in this matter with a Notice to enter appearance either in person or by an Advocate. He duly acknowledged receipt of the notice to appear together with the petition by signing on the copy which is attached to the Affidavit of Service. However, he neither filed any answer to the petition, nor did he file a cross-petition. In the circumstances, the petition is unopposed.

Secondly, I also note that the marriage between the parties herein was flawed on the ground that at the date of the marriage, the Respondent was allegedly married to another woman. That issue goes to the very validity of the marriage between the parties. However, since the allegation was not pleaded in the petition, it cannot be either raised or entertained at this stage. Otherwise its effect would have been to nullify the marriage *ab initio*.

Finally, the Petitioner has established that the Respondent moved out of the matrimonial home in December, 2002 and has since then married another woman. Implicitly, that denotes the commission of the matrimonial offence of adultery even though this is not specifically pleaded. Nevertheless, **Section 8 (1) (b)** of the **Matrimonial Causes Act (Cap. 152 of the Laws of Kenya)** specifically provides that –

“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 –

(a) (spent)

(b) Has deserted the petitioner without cause for a period of at least three years immediately preceding the presentation of the petition; or ...”

According to the evidence before this Court, it is clear that the

Respondent left the matrimonial home in December, 2002, never to come home again. This petition was filed on 26th August, 2011 which was about 9 years after the desertion.

From these facts, I am satisfied that the Petitioner has proved the

matrimonial offence of desertion and is entitled to divorce as prayed. I accordingly order that –

1. The marriage solemnized between the parties hereto in the Registrar’s Office, Nairobi, in June, 1999 be and is hereby dissolved.

2. Decree nisi to issue.

3. Decree nisi to become absolute after 30 days upon the application of either party.

Orders accordingly.

DATED and DELIVERED at NAIROBI this 19th day of March, 2012.

L. NJAGI
JUDGE