



J.W.G..... PETITIONER

VERSES

M.L.R..... RESPONDENT

J U D G M E N T

The Petitioner in this divorce cause is a Kenyan national known as **J.W.G.** She seeks dissolution of her marriage to **M.L.R.**, and Italian National. The couple got married on 30th July 2003 before the Registrar of Marriages at Sheria House, Nairobi.

The Petition for divorce shows that the couple have no child. The Petitioner is domiciled and resident in Kenya. The petition was served on the respondent who, on 9.12.2009, entered appearance through his advocates, **Messrs Muniafu & Company.** The Respondent did not file answer to the petition and consequently the petition proceeded to hearing undefended. The Petitioner was represented by Messrs J. Ngaii Gikonyo Co., Advocates.

Cruelty is the ground on which the Petitioner seeks dissolution of the marriage. In her evidence before me, the Petitioner told the court that the parties lived in Isabania. They were both volunteers in (*particulars withheld*) and lived in Isabania from 30.7.2003 to October 2003 after which they went to Italy where they took up residence in Cremon.

It was while they were in Italy that the Petitioner decided to pursue further studies. She came to Kenya for that purpose in January 2004. It seems that this was a decision mutually reached by the couple. During her studies, the Petitioner used to go to Italy over the holidays. In the year 2005, she noticed a change in the behavior of the Respondent when he told her that he wanted to become a catholic priest! This shocked the Petitioner who tried to discuss the matter with him but to no avail.

The Petitioner turned to the Respondent's parents for help but they too declined to interfere.

It was the Petitioner's evidence that prior to this, when the couple were living in Cremon, Italy, the Respondent became abusive. He repeatedly beat her up and sometimes locked her out of the house forcing her to sleep in the verandah at night.

In January 2007 when the petitioner was in Kenya, the Respondent communicated with her following which the two linked up and started living together at Riruta up to March 2007 when he left. He later sent a text to the Petitioner informing her that he shall never even want to see her. He did not leave any money for rent for the premises they lived in. The Petitioner had to pay the rent single handedly. During the period they cohabited, the Respondent had insisted on having protected sex with the Petitioner and perhaps this explains why they got no children in spite of the fact that both were in good health according to the Petitioner. It was also the Petitioner's evidence that the Respondent did not support her. One must wonder what the marriage was for as neither seemed to derive any happiness from it. But the evidence seems to show that the Respondent was using the Petitioner as a sex object to be discarded after use. This was a bizarre marriage. Right from the inception, the Respondent seems to have known that he was playing a game with the Petitioner. The latter was naïve to the extreme. She seems to have thought that she had found a good man to team up with in life. She was badly mistaken.

From her evidence, the Respondent was not a man who exhibited any conscience and if the Petitioner had some modicum of experience with life, she would have known that the Respondent was merely having fun. The desertion alleged on the part of the Respondent was without cause and was for a period of at least three years immediately preceding the presentation of the Petition for divorce. Desertion in law is the break-up of the matrimonial home caused by the withdrawal of one spouse. It must be without cause. It must be shown that it was probably virtually impossible for the parties to live properly together. The test in law to establish this is said to be found in the answer as to whether a reasonable spouse could be reasonably expected to put up with the conditions at the expense of her future. In this case, it is the Respondent who withdrew and left. The Petitioner did not commit any act to precipitate it.

The treatment the Petitioner got from the Respondent is a great lesson to other young women who may have a propensity to get married to foreigners or Caucasians whose backgrounds they hardly know. The marriage was a civil marriage governed by the provisions of the Matrimonial Causes Act, Cap 152. Under the said statute, desertion is a ground for divorce providing that the Petitioner who relies on it in seeking dissolution of the marriage is able to prove it against the offending spouse. Where the spouse at fault drives the party not at fault away, the desertion is said to be constructive.

In the instant case, the Respondent left the Petitioner more than 3 years prior to the presentation of the divorce petition. The parties had no matrimonial home as such. But assuming that the last place they cohabited at Riruta was the matrimonial home, or so thought the Petitioner, the Respondent deserted it without cause. The marriage between the parties was a bubble. It was a sham. It was an excuse for the Respondent to do as he wished with the Petitioner including demand for sex. The Petitioner, mesmerized by the Caucasian willingly allowed herself to be led to the slaughter. She realized a trifle too late that the Respondent was a joker and an exploiter. No court of law would fail to dissolve such marriage which was the very antithesis of what a marriage should be. I am satisfied that the Petitioner has proved desertion on the balance of probabilities. I am satisfied that the marriage should be dissolved on the ground of desertion.

Accordingly, I pronounce a decree of divorce and hereby dissolve the marriage between the Petitioner and the Respondent on the ground of desertion on the Respondent's part.

In the first instance, a **decree nisi shall issue forthwith**, and subject to the provisions of Section 15 of the Matrimonial Causes Act, Cap 152, **the decree nisi shall be made absolute after the expiry of three months after this pronouncement**. It is so ordered.

There shall be no order as to costs.

Dated at Milimani Law Courts, Nairobi, this 24TH day Of May 2012

G.B.M. KARIUKI, SC
JUDGE

COUNSEL APPEARING

Mr. J.N. Gikonyo of J. Ngaii Gikonyo & Co. Advocates for Petitioner

Mr. Kugwa, Court Clerk