



REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Divorce Cause 23 of 2012

H. Z.....PETITIONER

VERSUS

P. L.....RESPONDENT

JUDGMENT

The Petitioner herein prays for two orders-

- 1. That the marriage between the Petitioner and the Respondent be dissolved forthwith**
- 2. That the Respondent does pay the costs of this Petition.**

The Petition is based on two grounds, i.e. cruelty and desertion.

The particulars of cruelty are that-

- (a) The Respondent has been verbally abusive, confrontational, and uncooperative to the Petitioner**
- (b) The Respondent has continually picked up quarrels with the Petitioner and has on several occasions insulted and assaulted the Petitioner.**
- (c) The Respondent has continually threatened and harassed the Petitioner in front of friends.**

On desertion, it is the Petitioner's case that-

- (i) The Respondent left the matrimonial home on 3rd day of February, 2006 and efforts to persuade her to return have been unsuccessful.**
- (ii) The Respondent has not bothered to show interest in returning to the matrimonial home since the date she deserted.**
- (iii) The Respondent left the matrimonial home on her own accord and the Petitioner did not contribute to the circumstances leading to the desertion.**

Although the Respondent was personally served with a copy of the Petition and Notice to Appear, she neither entered appearance nor did she file an answer to the Petition. The hearing accordingly proceeded *ex parte* as undefended.

In his oral testimony given on oath, the Petitioner stated that the couple married in 1992. He produced the original certificate of marriage in Chinese, and an English translation by the Counsellor, Embassy of the People's Republic of China in the Republic of Kenya. It is dated June 20, 2001 and is headed **CERTIFICATE OF MARRIAGE No. {particulars withheld}** which reads thus -

“This is to certify that H. Z., male, born on March 29, 1969, and P. L., female, born on January 27, 1972 registered for marriage on November 27, 1992 in {particulars withheld}, Zhejiang Province, People's Republic of China.”

The Petitioner then referred to the particulars of cruelty set out in paragraph 6 of his Petition which he summarized by stating that the Respondent mistreated him by fighting and abusing him in public. On the ground of desertion, the Petitioner testified that the couple fought in February, 2006 after which the Respondent went away and never came back. He has never seen her since that time and does not even know whether she is in Kenya. However, he did not expel her from the matrimonial home.

On account of the foregoing, the Petitioner requested the court to grant him only divorce and nothing else. His counsel, Mr. Mwendu, also asked for divorce as prayed as the petition was not contested.

Having considered the Petitioner's testimony, I note that it is, indeed, uncontested. It is embarrassing for any spouse to be continually subjected to threats and harassment by the other spouse especially in front of friends. That is the fate the Petitioner herein has suffered at the hands of the Respondent. It does not help matters when the offending spouse becomes either verbally abusive, confrontational and uncooperative to the Petitioner, or continually picks up quarrels with the Petitioner and insults him. This only exasperates the Petitioner, and fans the flames of mental torture and cruelty. That alone is enough to buttress justification for a divorce on the ground of cruelty.

As if that were not enough, the Respondent also left the matrimonial home in 2006 and has never come back. The parties are not on talking terms and therefore the petitioner cannot tell whether or not the Respondent intends to come back. In the absence of any evidence to the contrary, it may safely be assumed that she has no intention of ever coming back to the matrimonial home, and such a departure constitutes desertion for more than three years which is another uncontested ground for granting a divorce in this matter.

By reason of the foregoing, I find that the Petitioner has made out a case for divorce and I accordingly make the following orders-

- 1. That the marriage solemnized on 27th November, 1992 in {particulars withheld}, Zhejiang Province, People's Republic of China between the Petitioner and the Respondent be and is hereby dissolved.**
- 2. Decree nisi to issue.**
- 3. Decree nisi to be made absolute upon application by either of the parties after two (2) months.**
- 4. No order as to costs.**

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

**L. NJAGI
JUDGE**