

REPUBLIC OF KENYA

High Court at Nakuru

Divorce Cause 3 of 2012

S.R.H.....PETITIONER

VERSUS

R.S.H.....RESPONDENT

JUDGMENT

The Petitioner and Respondent contracted a Hindu Marriage on 9.04.1992 at the Shree Visa Oshwal Community Hall in Nakuru. Their marriage was blessed with two children, a son and a girl born on 11th November 1992 and 1st October 1995 respectively.

The Petitioner testified that for unknown reasons the Respondent deserted their matrimonial home in the month of April 2009, that after 17 years of marriage. The Petitioner consequently avers in his Petition that he has lost his conjugal rights by virtue of her desertion, fleeing with the last issue of the marriage, leaving him in a marriage wilderness, and being hostile to the Petitioner.

As of the time of the hearing of the Petition, the Petitioner testified that he does not know where the Respondent resides. The Respondent returned his daughter to him through his parents and that after completing Form V he had sponsored her to College in the U.S.A. where she is pursuing research into the human stem cells. He has not remarried, and since the Respondent deserted him, he has been lonely for over 4 years, and wishes his marriage to be dissolved. The Respondent did not respond to the Petition.

I have considered the Petition and the Petitioners evidence. Where in a marriage one partner deserts the other without any explanation at all, and does not respond to a Petition for Divorce, it is clear that such a party has no interest in the continuing existence of the marriage. It is of no use or benefit to one party in a marriage which the other party does not by the action of desertion wishes to either honour or sustain. Such a union of marriage is said to have irretrievably wishes broken down and it is only but proper to release the other party from its erstwhile binding confines.

In the circumstances therefore, and in exercise of the court's jurisdiction under Section 15 of the Matrimonial Causes Act (*Cap. 150, Laws of Kenya*) issue a Decree NISI to be made absolute after the expiration of six months.

I direct that each party shall bear its own costs.

There shall be orders accordingly.

Dated, signed and delivered at Nakuru this 6th day of December, 2012

M. J. ANYARA EMUKULE
JUDGE