



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MOMBASA**  
*(Coram: Ojwang, J.)*  
**DIVORCE CAUSE NO. 48A OF 2009**

W.S.....  
.....PETITIONER  
- **VERSUS** -  
L.A. A.....  
...RESPONDENT

**JUDGMENT**

In his petition dated **18<sup>th</sup> August, 2009** the petitioner, a Swiss citizen currently domiciled in Kenya, pleads that on **25<sup>th</sup> February, 2002** he had married the respondent, a Kenyan citizen domiciled in Kenya, in a civil ceremony conducted at the office of the Registrar of Marriages, Mombasa. The married couple thereafter lived together and cohabited as husband and wife in Mombasa, for a period of two years and nine months; but the petitioner pleads that in all that period of time, there was no consummation of the marriage.

That precisely, is the basis of the petitioner’s allegation of cruelty to which he was subjected by the respondent. One of the particulars of cruelty specified, is that the respondent “unilaterally denied the Petitioner all conjugal right, such that the marriage has never been consummated”. The petitioner pleads that: “the Respondent has systematically and totally abdicated her matrimonial, domestic and financial duties to the petitioner with the specific intention of causing...the Petitioner to suffer mental and emotional anguish”.

The petitioner links the allegation of cruelty to a claim of desertion; he pleads that the respondent, in 2009, abandoned the matrimonial home in Kenya, and went to unknown places abroad; and that since then, the petitioner has denied him consortium, “with no immediate expectation of [her] return to the said matrimonial home”.

The petitioner pleads that the marriage between him and the respondent has broken down irretrievably; that the parties “have been living separate and distant lives for the greater part of their....marriage”.

The petitioner pleads that he has in no way “been accessory to, connived [at] or condoned the said cruelty by the respondent”; and that there has been no collusion between the parties in bringing this petition.

The petitioner asks for dissolution of his marriage to the respondent.

By the Chamber Summons of **13<sup>th</sup> November, 2009** the petitioner sought leave of the Court to effect service by way of a newspaper advertisement: which prayer was heard and allowed by this Court on **13<sup>th</sup> November, 2009**. Thereafter substituted service was effected by advertisement in the **[particulars withheld] of 25<sup>th</sup> January, 2010**.

At the hearing, the petitioner, as PW1, gave evidence that following his first visit to Kenya in 1978, he kept coming on such visits, about five-to-six times a year, while he lived with his first wife in Switzerland; he subsequently separated from his wife, came to live in Kenya, and married the respondent on **25<sup>th</sup> February, 2002**. It was PW1's testimony that he lived with the respondent for about three years, and had last seen her in **February, 2007**; she left, and the petitioner has not been in contact with her since then, and does not know where she lives. There had been no shared marriage life between the parties, and there was no issue of the marriage. The petitioner asked that his marriage to the respondent be dissolved.

Learned counsel, **Mr. Kithi** left the pleadings and the evidence to speak for themselves, and he urged the Court to grant a decree of divorce.

It is true that the petitioner's case is plain. The documentation given in evidence shows the petitioner to have been aged 61 years, when he formally married the twenty-two-year-old respondent, an artist like himself. It is evident that the shared professional engagement had not nourished the growth of an emotional framework for married life, and the respondent consistently refused the intimacy which alone could sustain a happy marriage, by failing to give consummation. This situation was aggravated with the respondent's brusque departure from the matrimonial home, and refusal ever to make any form of contact at all with the petitioner.

These facts show the marriage to have been, quite contrary to the course of nature, a purely theoretical exercise which it cannot be the Court's business to sustain. The Court must answer the petitioner's prayer, and terminate the marriage by granting divorce. I hereby issue a decree **nisi** of divorce, which may be made absolute upon a suitable application being made, in accordance with s.15 (1) of the Matrimonial Causes Act (Cap. 152, Laws of Kenya).

**DATED and DELIVERED at MOMBASA this 28<sup>th</sup> day of January 2011**

.....  
**J. B. OJWANG**  
**JUDGE**