

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
DIVORCE CAUSE NO.86 OF 2006

M.P.....PETITIONER

VERSUS

A.S.S w/o M.P.....RESPONDENT

J U D G M E N T

The petitioner and the respondent were married at the Registrar's office in Nairobi on 17th August 2004. Soon after their marriage, the petitioner and the respondent cohabited together as husband and wife at an estate in Nairobi between August 2004 and October 2005. According to the petitioner, in October 2005, for no justifiable reason, the respondent deserted from the matrimonial home. Since then, the petitioner and the respondent have not resumed cohabitation. The petitioner accused the respondent of committing act of cruelty by refusing to accept or take care of his children born out of a previous marriage. The petitioner stated that the respondent denied him his conjugal rights and had further wasted the family's financial resources. On account of the foregoing reasons, the petitioner was of the view that his marriage to the respondent had irretrievably broken down with no possibility of salvage. It is for the said reasons that the petitioner was praying that his marriage to the respondent be dissolved.

The respondent was served with a copy of the petition and notice to appear. She did not enter appearance neither did she file an answer to the petition. The Deputy Registrar of this court duly issued a certificate to the effect that this divorce cause may be heard as undefended divorce cause. During the hearing of the petition, this court heard the evidence adduced by the petitioner. The petitioner basically reiterated the contents of his petition for divorce. From the said testimony, it was evident that the petitioner and the respondent have been separated for a period of more than five (5) years since the respondent deserted the matrimonial home. After deserting the matrimonial home, the respondent went back to her native home in Senegal. She has not returned to Kenya. This is where the petitioner currently resides and intends to establish a permanent home. It was apparent to the court that it is unlikely that the petitioner and the respondent will be reconciled taking into consideration the deterioration of their marital relationship prior to the respondent deserting the matrimonial home. According to the petitioner, the respondent did not accept his two (2) children born of his previous marriage. Due to the nature of the petitioner's work that requires constant international travel, it was imperative that the respondent takes up the responsibility of being a parent to the said children of the petitioner. This was not to be. This court is satisfied that the petitioner established to the required standard of proof that he ought to be granted his petition for divorce on the grounds of desertion.

In the premises therefore, this court will grant the petition for divorce. The marriage solemnized between the petitioner and the respondent on 17th August 2004 at the Registrar's office in Nairobi is hereby annulled. Decree nisi is hereby issued dissolving the said marriage. The same shall be made absolute thirty (30) days from the date of this judgment. There shall be no orders as to costs.

DATED AT NAIROBI THIS 21ST DAY OF JANUARY, 2011

L. KIMARU

JUDGE