



IN THE HIGH COURT OF KENYA
AT NAKURU
DIVORCE CASE NO.3 OF 2009

B.S.K.....PETITIONER

VERSUS

S.K.K.....RESPONDENT

JUDGMENT

The petitioner and the respondent celebrated their marriage under the **Hindu Marriage and Divorce Act** on 30th September, 1979. They were blessed with four children, the last born being nineteen years today but was 18 years when this cause was filed.

In the petition herein, the petitioner seeks the dissolution of the marriage and reasonable access to the last born child. The dissolution is sought on the ground of desertion. The petition were served on the respondent who resides in the United Kingdom. The firm of B.M. Quadros Advocate entered appearance for her but did not file any answer.

The matter proceeded *ex parte*. The petitioner testified that after their marriage they established their matrimonial home in Section[...]of Nakuru Town; that on 28th March, 2005, four years before the filing of this cause, without reasonable cause, the respondent left their matrimonial home for the United Kingdom with all the children; that todate she has never returned and has no intentions of returning. The petitioner also averred that he has not colluded with the respondent to bring this cause; that there is no likelihood of reconciliation.

The Matrimonial Causes Act applied to Hindu marriages by virtue of **Section 9** of the **Hindu Marriage and Divorce Act** (the Act). Further, desertion is one of the grounds of divorce provided for under **Section 10 (b)** of that Act.

A petition will be presented for divorce on the ground of desertion if the respondent has deserted the petitioner without reasonable cause for a period of three years immediately preceding the presentation of the petition.

I have already noted that the petition was presented four years after the alleged desertion. The petitioner's assertion that the respondent left Kenya for the United Kingdom without any reasonable cause and has since not return has not been controverted. That being so, I find that the ground of desertion has been proved.

The marriage between the petitioner and the respondent is hereby dissolved. A decree *nisi* to issue immediately and will be made absolute after the expiration of six months.

The prayer for custody and access has been overtaken by reason of the last child having attained the age of majority.

Costs to be in the cause.

Dated, Delivered and Signed at Nakuru this 17th day of February, 2011.

**W. OUKO
JUDGE**