

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

DIVORCE CAUSE NO.13 OF 2010

J.F.A.....PETITIONER

VERSUS

W.G.....RESPONDENT

J U D G M E N T

The petitioner and the respondent were married in the State of New Jersey, United States of America on 29th September 1984. After their marriage, the petitioner and the respondent cohabited together as husband and wife in the New York State, United States of America, in Sierra Leone and from 1995 in Nairobi, Kenya. The marriage has been blessed with two (2) children born respectively in 1987 and 1991. The petitioner avers that on 22nd March 2004, the respondent deserted the matrimonial home in Nairobi and gone back to Sierra Leone, her native country. The petitioner further states that since 1995, the respondent has suffered from a mental condition classified as schizophreniform disorder. Due to this condition, the respondent's behaviour had become unstable resulting in erratic behaviour. The respondent had further, without any provocation, assaulted and battered the children of the marriage. The petitioner avers that, upon deserting the matrimonial home, the respondent left the children of the marriage under his care and custody. The petitioner has been responsible for the education and the upkeep of the said children. The petitioner therefore craves for an order of this court to dissolve the marriage, because, in the petitioner's view, the marriage has irretrievably broken down.

The petitioner applied and was granted leave by this court to serve the petition for divorce out of the jurisdiction of this court. The respondent was duly served via DHL Worldwide Express. This court is satisfied that the respondent was served as directed by the court. The respondent did not enter appearance. Neither did she file any papers in answer to the petition. The petition for divorce was therefore unopposed. At the hearing of the petition, this court heard the oral testimony of the petitioner. The petitioner basically reiterated the contents of the petition. He testified that the respondent's behaviour changed when she developed the mental disease. Despite efforts by the petitioner to treat the condition, the respondent's condition worsened to an extent that she deserted the matrimonial home when she travelled back to her native country. It was the petitioner's case that since deserting the matrimonial home, more than six (6) years ago, the respondent has not made any effort to return to the said home.

This court has carefully considered the facts of this cause. It was clear to the court that indeed the marriage between the petitioner and the respondent has irretrievably broken down with no chance of reconciliation. The respondent suffers from a mental disease that changed her behaviour towards the petitioner. The petitioner and the respondent have been separated for a period of more than six (6) years. It is this court's opinion that the petitioner proved the matrimonial offence of desertion. In the said period that the petitioner and the respondent have been separated, efforts at reconciliation have been frustrated by the respondent's mental condition. This court will therefore grant the petition for divorce.

In the premises therefore, the marriage solemnized between the petitioner and the respondent on 29th September 1984 at Mount Laurel, New Jersey, United States of America is hereby dissolved. *Decree nisi* dissolving the said marriage is hereby issued. The said *decree nisi* 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 18TH DAY OF MARCH, 2011

L. KIMARU

JUDGE