

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

DIVORCE CAUSE NO.121 OF 2008

J. M. N.....PETITIONER

VERSUS

M.N. M.....RESPONDENT

J U D G M E N T

The petitioner and the respondent were on 27th February 1991 married under the **Marriage Act** at the Registrar’s office in Nairobi. After the celebration of the said marriage, the petitioner and the respondent cohabited together as husband and wife in Nairobi. The marriage was blessed with two (2) issues born in 1991 and 2000 respectively. According to the petitioner, the respondent, together with the children of the marriage, relocated to the United States of America in 2001. Since then, the respondent had not returned back to Kenya. The petitioner was of the view that the said relocation constituted desertion from the matrimonial home. He therefore urged the court to grant his petition for divorce.

The petitioner sought leave of this court to serve the respondent out of the jurisdiction of the court. In particular, the petitioner sought to serve the respondent by substituted service via DHL Courier Service. Leave was duly granted. The respondent was duly served. She did not enter appearance within the requisite period. Neither did she file an answer to the petition. This court, being satisfied that the respondent was properly served, directed the petitioner to proceed with his case, the absence of the respondent notwithstanding. At the hearing of the petition, the petitioner basically reiterated the contents of the petition for divorce. He testified that the respondent, at the pretext of visiting her sister in the United States of America, left the matrimonial home never to return. He stated that since leaving the matrimonial home in 2001, the respondent has not returned back to the country. The petitioner testified that he had travelled three times to the United States of America with a view to securing the respondent’s return back to the country, but all in vain. The petitioner was of the view that his marriage to the respondent has irretrievably broken down with no chance of salvage.

The evidence adduced by the petitioner was uncontroverted. Having evaluated the facts of this case, this court was satisfied that indeed the marriage between the petitioner and the respondent has irretrievably broken down on the ground of desertion. The petitioner and the respondent have been separated for more than ten (10) years. The respondent, having relocated to the United States of America, is unwilling to return to the matrimonial home. This is despite efforts by the petitioner to secure her return back to Kenya. It was apparent to the court that the respondent is unwilling to give the marriage a chance hence her refusal to return back to the matrimonial home.

In the premises therefore, the marriage solemnized between the petitioner and the respondent, at the Registrar’s office in Nairobi on 27th February 1991 is hereby dissolved. *Decree nisi* dissolving the said marriage is hereby issued. The *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