

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

DIVORCE CAUSE NO.101 OF 2010

V.V.J.....PETITIONER

VERSUS

V.J. J.....RESPONDENT

J U D G M E N T

The petitioner and the respondent were on 15th November 1991 married at the Registrar's office, Nairobi. The marriage was celebrated under the **Marriage Act**. After the celebration of the said marriage, the petitioner and the respondent cohabited together as husband and wife in P[...]estate in Nairobi. The marriage was blessed with one issue. According to the petitioner, the respondent deserted from the matrimonial home on 10th May 2005. The petitioner explained that the respondent left the matrimonial home after a disagreement. She stated that despite effort by elders of the community to reconcile them, the attempted promotion at reconciliation had not borne any fruit. It was the petitioner's view that her marriage to the respondent had irretrievably broken down with no chance of reconciliation. In the premises therefore, the petitioner urged the court to grant her petition for divorce.

The respondent was duly served with a copy of the petition. The respondent did not enter appearance. Neither did he file an answer to the petition. The Deputy Registrar of this court issued a certificate to the effect that the divorce cause shall be heard as an undefended cause. This court was satisfied that the respondent was properly served. It directed the petitioner to proceed with the hearing of the case, the absence of the respondent notwithstanding. The petitioner reiterated the contents of the petition in her testimony. This court has carefully considered the said evidence. It was apparent that indeed the marriage between the petitioner and the respondent has irretrievably broken down with no chance of it being salvaged. The petitioner and the respondent have been separated since 10th May 2005. This is a period of more than five (5) years. If the petitioner and the respondent were to be reconciled, then, in the intervening period reconciliation should have borne fruit. This court therefore holds that the petitioner established, to the required standard of proof of a balance of probabilities, the ground of divorce of desertion.

In the premises therefore, the marriage solemnized on 15th November 1991 between the petitioner and the respondent 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 8TH DAY OF APRIL, 2011

**L. KIMARU
JUDGE**