

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

DIVORCE CAUSE NO.141 OF 2006

M.P.J.....PETITIONER

VERSUS

V. D.P.K.....RESPONDENT

J U D G M E N T

The petitioner and the respondent were married on the 25th June 1994 in Nairobi under the **African Christian Marriage and Divorce Act**. The petitioner and the respondent cohabited together as husband and wife in various estates in Nairobi. The marriage was blessed with one issue, a boy, born on 5th November 1994. According to the petitioner, the respondent deserted from the matrimonial home in September 2002 without any justification or cause. Since then, the petitioner and the respondent have been separated. It is the petitioner's case that on this ground of desertion, her marriage to the respondent should be dissolved. She prayed for the court to grant her custody of the child of the marriage. She further urged the court to order the respondent to provide maintenance for her and the child of the marriage.

The respondent was served with a copy of the petition for divorce. He did not enter appearance. The Deputy Registrar of this court issued directions to the effect that the hearing of the divorce cause will proceed as undefended cause. This court was satisfied that the respondent was duly served with the petition for divorce. It directed the petitioner to proceed with the hearing of her case, the respondent notwithstanding. In her evidence, the petitioner essentially reiterated the contents of her petition for divorce. She told the court that she had been separated from the respondent since September 2002 when the respondent deserted from the matrimonial home. She urged the court to grant her petition for divorce. This court has carefully considered the facts of this divorce cause. It was clear to the court that the marriage between the petitioner and the respondent has indeed irretrievably broken down on the ground of desertion. Since the respondent deserted from the matrimonial home in September 2002, he has not made any effort to be reconciled with the petitioner. It is now about nine (9) years since the petitioner and the respondent were separated. This court therefore holds that the petitioner established, to the required standard of proof on a balance of probabilities, that indeed her marriage to the respondent is no longer sustainable on the ground of desertion.

In the premises therefore, the marriage solemnized between the petitioner and the respondent on 25th June 1994 in Nairobi 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. As regard the other prayers sought by the petitioner in her petition for divorce i.e. the prayer for the custody of the child and the maintenance of the child, this court is of the view that the same should be canvassed, in the first instance, before the Children's Court which has jurisdiction to deal with the matter. The petitioner is therefore advised to file an appropriate case before the Children's Court. There shall be no orders as to costs.

DATED AT NAIROBI THIS 1ST DAY OF APRIL, 2011

L. KIMARU

JUDGE