



**M.M.N.....PETITIONER**

**V E R S U S**

**A.W.M.....RESPONDENT**

**J U D G M E N T**

The petitioner and the respondent were married on 3<sup>rd</sup> December 1983 at the Bahati Martyrs Church in Nairobi. The marriage was celebrated under the **African Christian Marriage and Divorce Act**. After the celebration of the said marriage, the petitioner and the respondent cohabited together as husband and wife in various estates in Nairobi and Mombasa. The couple was blessed with two children. The said children are now both adults. According to the petitioner, the respondent deserted from the matrimonial home on 8<sup>th</sup> April 1993. Since then, despite plea by the petitioner, the respondent had failed to return to the matrimonial home. The petitioner was of the view that his marriage to the respondent was irretrievably broken down with no chance of being salvaged. He urged the court to grant his petition for divorce.

The respondent was served with the petition. She failed to enter appearance. She did not file any papers in answer to the petition. This petition for divorce was therefore heard as an undefended cause. During the hearing of the petition, the petitioner adduced oral evidence in support of his petition for divorce. He reiterated the contents of his petition for divorce. He told the court that the respondent deserted from the matrimonial home in 1993 without any justifiable cause. He testified that although he attempted to be reconciled with the respondent, all attempts at reconciliation had been unsuccessful. He therefore urged the court to dissolve the marriage. This court has carefully considered the facts of this case. It was evident to the court that the marriage between the petitioner and respondent has indeed irretrievably broken down. The petitioner and the respondent have been separated for more than eighteen (18) years. If there was any chance that the petitioner and the respondent were to be reconciled, they would have been so reconciled during the intervening period. This court therefore holds that the petitioner proved the matrimonial offence of desertion to the required standard of proof on a balance of probabilities.

In the premises therefore, the marriage celebrated between the petitioner and the respondent on 3<sup>rd</sup> December 1983 at Bahati Martyrs Church 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. There shall be no orders as to costs.

**DATED AT NAIROBI THIS 20<sup>TH</sup> DAY OF MAY 2011**

**L. KIMARU**

**J U D G E**