

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

DIVORCE CAUSE NO. 159 OF 2009

H.W.M.....PETITIONER

V E R S U S

H.M.N.....RESPONDENT

J U D G M E N T

The petitioner and the respondent were on 25th November 2003 married at the Registrar's office in 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 at Machakos District and in Umoja estate in Nairobi. There were no issues in the marriage. According to the petitioner, in December 2003 the respondent sought permission from him to pay a visit to the United States of America. He granted the permission. The petitioner states that since that date the respondent had not returned to the matrimonial home despite his pleas for the respondent to so return. In his testimony before court, the petitioner stated that after staying for a while in the United States of America, the respondent broke off all communication with him. The petitioner recalled that when the respondent visited Kenya in 2009, she was not willing to see him or to communicate with him. The petitioner formed the view that his marriage to the respondent had irretrievably broken down on grounds of irreconcilable differences between them that was occasioned by the respondent's desertion from the matrimonial home. The petitioner therefore pleaded with the court to grant his petition for divorce.

The respondent was served with the petition for divorce. She did not enter appearance. Neither did she file an answer to the petition. This court was satisfied that the respondent was properly served. It allowed the petitioner to proceed with the hearing of his petition for divorce in the absence of the respondent. In his testimony before court, the petitioner basically reiterated the contents of his petition for divorce. This court has carefully considered the said evidence. It was clear to the court that the marriage between the petitioner and the respondent is indeed irretrievably broken down. It was apparent that from the moment the respondent relocated to the United States of America, that she no longer had any interest in the marriage or with the petitioner. She broke off all communication with the petitioner. In the period of about eight (8) years, although the respondent paid visits to Kenya, she did not bother to return to the matrimonial home. This court formed the opinion that the petitioner established, to the required standard of proof on a balance of probabilities, the matrimonial ground for divorce of desertion. It was clear to the court that even if the petitioner and the respondent were given more time, the chance for reconciliation is remote.

In the premises therefore, the marriage solemnized between the petitioner and the respondent on 25th November 2003 at the Registrar's office 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. There shall be no orders as to costs.

DATED AT NAIROBI THIS 13TH DAY OF MAY 2011

L. KIMARU

J U D G E