

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

DIVORCE CAUSE NO.176 OF 2009

N.Y.....PETITIONER

V E R S U S

W.E.M.....RESPONDENT

J U D G M E N T

The petitioner and the respondent were on 20th March 1998 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 K[...] in Nairobi. There were no issues born to the said marriage. According to the petitioner, the respondent in July 2002 left Kenya for the United Kingdom on the pretext that she was going to secure places in schools for her two children born out of a previous relationship. The petitioner averred that since deserting from the matrimonial home, the respondent had not returned. This is despite the fact that the petitioner had continued to support the respondent and her children in their stay in the United Kingdom. The petitioner was of the view that since it is more than nine (9) years since the respondent deserted from the matrimonial home, and further since the respondent had made no effort to return to the matrimonial home, his marriage to the respondent had in the circumstances irretrievably broken down with no chance of being salvaged. He urged the court to grant his petition for divorce on the ground of desertion.

The respondent was served with a copy of the petition. She did not enter appearance. Neither did she file an answer to the petition. This court was satisfied that the respondent was duly served. It allowed the petitioner to proceed with the hearing of his petition in the absence of the respondent. The petitioner essentially reiterated the contents of the petition in his testimony before court. This court has carefully considered the said evidence. 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. It was apparent that since the respondent relocated to the United Kingdom in July 2002, she had no inclination to return to her matrimonial home in Nairobi Kenya. The petitioner narrated how the respondent despite visiting Kenya on several occasions since then, had not bothered to return to the matrimonial home. It was clear to the court if the respondent had any wish to return to the matrimonial home, she would have done so once she became aware that the petitioner was getting desperate with her continued absence from the matrimonial home. This court therefore finds that the petitioner established, to the required standard of proof on a balance of probabilities, the matrimonial offence of desertion.

In the premises therefore, the marriage solemnized between the petitioner and the respondent on 20th March 1998 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 MAY 2011

L. KIMARU

J U D G E