



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
DIVORCE CAUSE NO. 38 OF 2007

E.M.A..... PETITIONER
=VERSUS=
P.C.K..... RESPONDENT

JUDGEMENT

Before court is the petition brought by one **E. M. A** in which she prays for the dissolution of her marriage to the Respondent **P.C.K.** The Respondent despite having been properly served did not enter appearance and did not file any answer to the petition. As such the matter proceeded as an undefended cause.

The Petitioner in her evidence told the court that she and the Respondent got married on 26th January 1997, she has produced a copy of her marriage certificate as an exhibit **Pexb1**. The couple cohabited as man and wife for ten years at M area of Mombasa. Their union was blessed with two daughters namely –

- (1) A.A – born in 2001
- (2) H.N born in 2002

The Petitioner told the court that initially all was well and the couple lived in harmony. However problems arose in 2002 with the Respondent developing a habit of disappearing from home for days on end in July 2006 the matrimonial home and has never returned. He has also cut of all communication and assistance to the family. It is for this reason that the Petitioner now comes to this court seeking a divorce.

The Matrimonial Causes Act Cap 152 provides at S. 6(1) thus:

“6(1) No petition for divorce shall be presented to the court unless at the presentation of the petition three years have passed since the date of the marriage”

In this case the couple got married in January 1997. The petition for divorce was filed in court on 20th August 2007 a full ten years after the solemnization of the marriage. I am satisfied that this petition complies with S. 6(1) and thus is properly before this court.

The Petitioner in her evidence told the court that the Respondent in 2002 developed a habit of disappearing from home for days. When questioned about this the Respondent would retort that as the man of the house he was free to come and go as he pleased. In July 2006 the Respondent left the home for good and cut of all communication with the family. The Petitioner states that she does not know his current whereabouts. These actions in my view amount to a total abdication of the Respondent’s role as a husband and father. The purpose of a marriage is that the parties therein receive mutual support, love and

encouragement from each other. The parties to a marriage also have a right to enjoy conjugal relations. This cannot be possible where one spouse vanishes from the home. Even if the Respondent is the head of the house it is only fair that he alert his family when he plans to leave the home and when he will return. A marriage cannot be conducted by remote control. The result of this '**desertion**' by the Respondent is that the Petitioner has been left to shoulder the burdens of the home alone. She has to provide for her children's needs alone and the financial burden of running the home has been left to her. These allegations made by the Petitioner remain uncontroverted and this court has no reason to doubt her testimony. The Respondent's actions amount to mental and emotional cruelty. The Respondent's actions have denied the Petitioner her conjugal rights and have denied her the emotional and financial support due to her as a wife. Since July 2006 the Respondent has made himself unavailable to the family – this is a period of five (5) years. This cannot be termed a marital union. I do hereby allow this petition on grounds of cruelty. I allow the dissolution and decree nisi to issue to be made absolute within three (3) months of today's date.

Dated and Delivered in Mombasa this 6th day of June 2011.

M. ODERO
JUDGE

In the presence of:
Ms. Odhiang for Petitioner
No appearance by Respondent