



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MALINDI

DIVORCE CAUSE NUMBER 4 OF 2011

P. M.K.....PLAINTIFF

=VERSUS=

L.R.M.....RESPONDENT

JUDGMENT

P.M.K (The Petitioner) has petitioned for this Court for dissolution of the marriage between himself and **L.R.M** (Respondent). The parties solemnized their union on 8th April 2004 at MALINDI, Kenya, at the DC`s office. After celebration of the union, they both lived in Malindi and Nantes, Paris. The marriage was not blessed with any issue.

It is the Petitioner`s case that on 24/4/04 they travelled to France and stayed there for 3 months, after which the Petitioner returned to Kenya, leaving the Respondent in France – she never returned. Thereafter the Respondent cancelled all the contacts between them, and all attempts by the petitioner to communicate with her have been futile since then. The Petitioner states that as a result, he has been deprived of his conjugal rights and been deserted by the Respondent and this has exposed him to a lot of cruelty and mental anguish, such that his life has come to a complete standstill.

The Respondent did not file any response to the Petition and the matter proceeded as an undefended cause. At the hearing the Petitioner narrated to this Court how they met at [.....] HOTEL where he performed as an animator. The Respondent was a divorcee with children from a previous marriage but Petitioner had no children. They married at Malindi DC`s office on 8th August 2004 and were issued with a marriage certificate under the Marriage Act – the same has been produced as exhibit. They lived in Malindi then travelled to France where they stayed for one month and due to the visa conditions in respect of the Petitioner, he had to return to Kenya. Respondent told him to go ahead of her and she would prepare and follow him later. She never came back and when Petitioner tried to call her on phone,

her phone was off and letters he sent received no reply. He says that seven years is a long time to wait and he prays for dissolution of the marriage.

Of course the question that comes to mind is this – what became of the Respondent – did she suddenly change her mind once she was back in her home country and decide to sever the relationship? Did she go back to her former husband? Did she die? I think it is with this last position in mind that I`m inclined to consider that even if that were the case then legally at the lapse of 7 years, she would be presumed dead. What`s more section 8 of the Matrimonial Casue Act (Cap 152) provides grounds on which divorce may be granted include inter alia.

(a) Desertion without cause for a period of at least three years preceding the presentation of the Petition.

The evidence clearly demonstrates that the situation obtaining here qualifies for divorce under this ground and I make a finding that indeed the Respondent has deserted the petition for more than three years without any reasonable cause. In consequence therefore, I allow the Petitioner`s prayer as sought and enter judgement in his favour, that the union between him and the Respondent be and is hereby dissolved. A decree nisi shall issue and shall be made absolute upon the expiry of six months. Costs of this Petition to the Petitioner.

DELIVERED AND DATED THIS 20TH DAY OF JULY 2011 AT MALINDI

H A OMONDI

JUDGE

Mr Maosa holding brief for Kilonzo for Petitioner

No appearance for respondent