



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

DIVORCE CAUSE NO. 12 OF 2011

J. A. B. V Alias

J.B.....PETITIONER

=VERSUS=

M.A.M.....RESPONDENT

JUDGEMENT

This is the petition dated 10th March 2011 filed by one **J.A.B.V alias J.B** seeking the following orders:

“(a) That the said marriage be dissolved

(b) That the Respondent may be ordered to pay the costs of this cause”.

The Respondent **M.A.M** was duly served with a copy of the petition as well as a notice to enter appearance. She did not enter appearance neither did she bother to file an answer to the petition. The pleadings were declared to be in order and the matter proceeded for formal proof.

The Petitioner told the court that he and the Respondent who are both Hindus underwent a Civil Marriage ceremony on 24th November 1989 at the Registrar’s office in Nairobi. He produces the original copy of their marriage certificate as proof of this fact **Pexb1**. The couple lived as man and wife until 14th February 2008 when the Respondent left the matrimonial home and went to live with her parents in Nairobi. The Respondent left a note telling the Petitioner that she would not return. The Petitioner told the court that he did approach the Respondent’s family with a view to resolving the issue but the Respondent was adamant and declined to return home.

As it is the couple have lived separately since 2008. The Respondent has deserted the Petitioner for no apparent reason. If the Respondent had valid cause to move out of the matrimonial home, she had an opportunity to explain this to the court but has declined to do so. The Petitioner has thus been denied the companionship and conjugal rights due to him as a husband for the past three (3) years. The Respondent's actions defeat the very purpose of a marriage and in my view such unexplained and unprovoked desertion amounts to cruelty as against the Petitioner. I am satisfied that the ground of cruelty has been proved pursuant to S. 8(1)(c) of the Matrimonial Causes Act Cap 152 Laws of Kenya. This petition succeeds and I do allow prayer (a) of the same. Decree nisi to issue to be made absolute three (3) months from today's date. This being a family matter I find it prudent not to make any order on costs.

Dated and Delivered in Mombasa this 11th day of October 2011.

M. ODERO
JUDGE

In the presence of:
Mr. Okemo for Petitioner