



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

FAMILY DIVISION

DIVORCE CAUSE NO.33 OF 2011

C.M.K..... PETITIONER

VERSUS

T.E.K.....RESPONDENT

J U D G M E N T

I had earlier on adjourned this Judgment to enable me seek a clarification from the Petitioner and the registry as to why the documents herein were photocopies yet there was no order for reconstruction of the file in the file. I have since established from the Executive Officer that the original file could not be traced and the registry requested the Petitioner to furnish them with copies of the pleadings herein. I can now proceed to write the Judgment.

The Petitioner C.M.K filed her petition on 10th March 2011. She is seeking an order of dissolution of the marriage between herself and her husband T.E.K which was celebrated in 2005 at the Office of the Registrar of Marriages in Nairobi.

She relies on the ground of desertion as evidenced in paragraph 9 of her petition. She says that the Respondent deserted her without cause from May 2006 and has not returned to her yet. She has also stated that the Respondent is a habitual drunkard but she has not said whether that conduct has amounted to cruelty towards her or not. She says that her marriage has irretrievably broken down and entreats the court to dissolve the same. There are no issues of this marriage and so issues of custody do not arise. She has not asked for orders of maintenance either. In her oral testimony in court, she reiterated the contents of the petition and urged the court to dissolve the marriage.

The petition was duly served on the Respondent personally by a Court Process Server but he did not respond. The cause therefore proceeded as an uncontested divorce cause.

The Petitioner's claim that the Respondent deserted her in 2006 and has never contacted her since then has not been rebutted. This amounts to desertion and it has been for over the three years allowed in Law to form a ground of divorce.

In the absence of any rebuttal evidence from the Respondent, I am satisfied that the Petitioner has proved the ground of desertion to the required standard. I therefore enter Judgment in her favour and grant her the orders sought in her petition.

The marriage between her and the Respondent is hereby dissolved. A decree nisi to issue forthwith. Petitioner be at liberty to apply for the decree absolute after a period of 6 months. There shall

be no order as to costs as this petition was not defended.

Delivered, dated and signed at Nairobi this 17th day of November, 2011.

W. KARANJA
JUDGE