



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
Divorce Cause 16 of 2009

P. A.W PETITIONER

VERSUS

A.W.M.W..... RESPONDENT

JUDGEMENT

This is the Petition of **P.A.W** filed in court on 3rd March 2009 seeking the dissolution of his marriage to **A.W.M. W**. The Respondent was served with a Notice to enter Appearance but failed to enter appearance or to file an Answer to the Petition. On 12th June 2009 the Deputy Registrar directed that the matter proceed to hearing as an undefended cause in the Mombasa High Court.

Hearing of the petition commenced before this court on 16th December 2009. Mr. Aziz Advocate appeared for the Petitioner. The Petitioner Mr. A.W testified on his own behalf. He told the court that he and the Respondent got married on 5th October 2005 at the Registrar's office. He produces before court their original Certificate of Marriage as evidence of this fact **Pexb1**. The couple co-habited as man and wife in Bombolulu, Nyali and Mtwapa. The couple had no children together. The Petitioner testified that by 2007 their union began to experience problems. He accuses the Respondent of adultery and tells court that she would talk to her boyfriends in his presence causing him great distress. The Respondent would only come home occasionally. Eventually she collected her things and moved out of the matrimonial home to Shanzu. From 2007 to date the couple has not lived together as man and wife. In 2009 the Petitioner filed this present petition.

The law governing divorce is found in the Matrimonial Causes Act Cap 152 Laws of Kenya. S. 6(1) thereof provides –

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

In the present case the couple solemnized their marriage in October 2005. This petition was brought in March 2009 about 4½ years after the marriage. I therefore find that this petition has been brought in full compliance with S. 6(1) of Cap 152 and is therefore properly before the court.

In his petition the Petitioner relies on the grounds of cruelty and desertion. Both are grounds which are recognized and provided for by S. 8 of the Matrimonial Causes Act. In his evidence the Petitioner states that the Respondent had a boyfriend whom she would call and talk to causing him great distress. This is quite unfair and shows great contempt towards the Petitioner who was her husband. The Petitioner's evidence on record remains uncontroverted as the Respondent failed to enter appearance nor file any reply to the Petition. I have no reason to doubt the veracity of this evidence.

The Petitioner states that in 2007 the Respondent deserted the matrimonial home and went to live in Shanzu. To date she has not returned. It is clear from her actions that the Respondent has effectively deserted this marriage. The fact that she made no response to the petition is further evidence that she has no interest in maintaining a union with the Petitioner. The Petitioner himself tells the court that he holds out no hope for a reconciliation. Far be it from the court to yoke together those who clearly have no wish nor desire to remain so

yoked. In view of the long period of desertion I am convinced that this marriage has irretrievably broken down. As such I find that this petition succeeds and enter a decree nisi to be made absolute within a period of three (3) months. This being a matrimonial cause I find it prudent to make no orders as to costs.

Dated and Delivered at Mombasa this 12th day of February 2010.

M. ODERO

JUDGE

12/2/2010