



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU

Divorce Cause 9 of 2006

B.T.....PETITIONER

VERSUS

C.C.T.....RESPONDENT

JUDGMENT

By a Petition for the dissolution of marriage dated and filed on 26th July, 2006, the Petitioner sought the dissolution of his marriage with the Respondent on the grounds of desertion and adultery.

In an answer to the Petition the Respondent too sought the dissolution of the marriage on the grounds of adultery and constructive desertion on the part of the Petitioner by reason of the adultery and cohabitation with another woman.

The facts were not disputed. The Petitioner and the Respondent solemnized their marriage through the Superintendent Registrar's Office Nakuru on 21st December, 2001. The Respondent who had been studying

in Switzerland returned to her studies in that country immediately after the marriage leaving the Petitioner high and dry. This led the Petitioner's falling into the arms of M.C.C.

The Respondent on her return from Switzerland on or about 16th December, 2005, did not return to the Petitioner's bed or matrimonial home. She found solace in the arms of another man D.K.K who has fathered two children with her, and does not want anything to do with the Petitioner. This is equally true of the Petitioner.

What is meant by the phrase the marriage having "**irretrievably broken down**". It means that the marriage cannot be rescued either by reconciliation or other counseling attempts between the erstwhile partners in marriage. In no other way can a marriage be said to have irretrievably broken down than in a situation where both parties, the Petitioner and the Respondent (*Cross-Petitioner*) have not only parted ways by living apart, but have also moved on with their

respective lives, and got brand new partners, M.C.C (*for the Petitioner*) and D.K.K (*for the Respondent/Cross-Petitioner*).

In the circumstances, the Petition and Cross-Petition are allowed and the order dissolving the marriage between the Petitioner and Respondent/Cross Petitioner is hereby issued. There shall be a decree NISI valid for three months, and unless there is application to the contrary, it shall be made absolute.

Each party shall bear its respective costs arising from the Petition and Cross-Petition.

There shall be orders accordingly.

Dated, delivered and signed at Nakuru this 5th day of February 2010

M. J. ANYARA EMUKULE

JUDGE