



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)**

Divorce Cause 20 of 2009

G.K.T..... PETITIONER

-V S-

F.A.M..... RESPONDENT

J U D G M E N T

Before me is a petition dated 3rd February, 2009 filed by the petitioner **G.K.T** in person. The respondent is named as **F.A. M.** It is a petition filed under the Matrimonial Causes Act (**Cap. 152**). It is a petition for dissolution of marriage and custody of children.

The grounds for seeking dissolution of marriage are cruelty and desertion. Particulars of cruelty were given in the petition.

The respondent did not file any response to the petition, though the petition is said to have been served. On the hearing date, only the petitioner testified. It was his evidence that on 9th September, 2007 the respondent disappeared from home and left both the petitioner and two children of the marriage behind. The petitioner testified that they got married with the respondent at the Attorney-General's office Nairobi. It was also his evidence that the respondent used to disappear at night and leave the petitioner alone prior to her deserting. Though the parents tried to intervene, reconciliation did not work.

I have considered the petition, documents filed and the evidence of the petitioner given in court. This petition is not opposed. The evidence of the petitioner is uncontroverted. However, the petitioner has to prove the allegations made against the respondent.

Desertion has not been proved. Section 8 of the Matrimonial Causes Act (**Cap.152**) requires such desertion to be for a period of at least 3 years before a petition can be presented in court. The desertion is said to have occurred in September, 2007. The petition was filed on 3rd February, 2009. That period was less than 3 years. Therefore, desertion has not been proved.

On cruelty, the particulars on the petition are many. Denying spouse conjugal rights for a continuous period, and not caring for him or her or the children for a considerable period of time amounts to cruelty. The period between the disappearances of the respondent from the matrimonial home in September, 2007, to the time of filing the petition in February, 2009 is adequate to prove cruelty. I find and hold that the petitioner has proved cruelty.

On the children, I find that the children are currently with the petitioner. I will therefore grant custody, as the respondent appears to have chosen to live her own life without the children.

I find that the marriage between the petitioner and the respondent has broken down irretrievably. I will dissolve the marriage.

For the above reasons, I order as follows-

1. ***The marriage between the petitioner and the respondent be and is hereby dissolved. I hereby issue a decree nisi, to be made absolute after the lapse of 6 months.***

2. ***The petitioner is granted care, control and custody of the two children, with the respondent having a right of access.***

Petitioner will bear his own costs, as petition was not opposed.

It is so ordered.

Dated and delivered at Nairobi this 11th day of March, 2010.

George Dulu
Judge.