



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA**

Divorce Cause 26 of 2008

**CWYPETITIONER
VERSUS
EDYRESPONDENT**

J U D G M E N T

The Petitioner lodged this Petition in court on 22nd May, 2008 seeking *inter alia* the dissolution of the marriage between himself and the Respondent.

On 27th January 1994 the Petitioner then a bachelor married the Respondent then a Spinster at the Registrar of Marriages office in Mombasa. The two then cohabited as husband and wife at Gede near Malindi and Tononoka, in Mombasa.

The Petitioner alleges in his petition that the Respondent left the matrimonial home twice in September 1997 to stay with a lady friend and later came back to him after one month. He alleges that again in December 2004 she left the home claiming that the Petitioner was stressing her unnecessarily. There are no children born out of the marriage.

The Petitioner seeks divorce on grounds of cruelty and desertion. He has set out the grounds of alleged cruelty and desertion. He complains in the petition that the acts of cruelty which included abuses, threats and harassment have caused him great mental torture and have made him depressed.

With regard to the allegation of desertion he pleaded:-

- *That on 3rd December 2004 the Respondent packed all her things and left the matrimonial home. That she has since never been back to the matrimonial home and the two are now staying separately.*
- *That the Respondent has continued to harass, intimidate, blackmail and threaten the Petitioner even after learning the matrimonial home.*
- *That on or about November 2005, the Respondent wrote to the Petitioner a letter informing him that she has since relocated to Dubai, and that she had "released him" for their marriage."*

The Respondent upon being served entered appearance on 13th June 2008. However she did not file any answer or cross-petition. At the hearing both the Petitioner and the Respondent attended. The Petitioner testified on oath. The Respondent declined to cross-examine him upon being invited by the court to do so. She also declined to offer any evidence in testimony and said that she left it to the court for its decision.

I have considered the Petitioner and the testimony of the Petitioner. I have taken into account the appearance of the Respondent on record and attendance in court at the hearing when she elected not to offer any evidence to contest the testimony of the Petitioner.

On a balance of probability I do find that the Respondent left the matrimonial home on 3rd December, 2004 after packing her belongings and left never to return to the Petitioner. By the time of hearing she has been away for 5^{1/2} years. She did not give any reasonable cause or explanation for abandoning the Petitioner and the matrimonial home. The Respondent was duly served with the Petition and she entered appearance. She opted not to defend or respond to it. She attended the hearing of the Petition but did not offer any evidence.

I do hold that her conduct amounts to admission of the allegations, testimony and evidence given. I do find that the Respondent is guilty of desertion of her husband, the Petitioner. The period of 5^{1/2} years is sufficient proof that the Petitioner has suffered cruelty at the hands of the Respondent. The marriage has certainly broken down irretrievably.

I therefore do hereby order the dissolution of the marriage herein. The Respondent shall bear the costs of the Petition and payable to the Petitioner. Her conduct does not allow this court to exercise its discretion on costs in any other manner.

DATED, DELIVERED and SIGNED on this 7th day of June 2010 at Mombasa.

M. K. IBRAHIM
J U D G E

-
7/6/2010

-
Coram:

Ibrahim, J

Court clerk – Kazungu

Mr. Wameyo for the Petitioner

No appearance for the Respondent

Judgment read in their presence.