

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA

Divorce Cause 59 of 2009

J.O.....PETITIONER

VERSUS

T.M.....RESPONDENT

JUDGMENT

In his petition lodged on 29th October, 2009, J.O, (hereinafter “*the petitioner*”) seeks dissolution of his marriage to his wife T.M, (hereinafter “*the respondent*”) on the grounds of cruelty and desertion. In the particulars of cruelty, the petitioner states, *inter alia*, that the respondent has since the celebration of their marriage persistently verbally abused the petitioner and that she has on several occasions been rough and neglected the petitioner. With respect to desertion, the petitioner states that the respondent has since the year 2002, deserted the matrimonial home and has not resumed cohabitation with the petitioner.

In the petition, the petitioner states that they are blessed with three issues namely: P.O aged 18 years, D.O aged 17 years and M.O aged 10 years who all live with the petitioner and that he was granted their custody in Children’s Case No. 95 of 2009 at Tononoka Children’s Court. The couple lived and cohabitated in Mombasa in Kenya.

The respondent has filed no answer to the petition and did not attend the court when the petition came up before me for hearing on 7th July, 2010. The petition therefore proceeded ex-parte. In his oral testimony in court, the petitioner stated that he married the respondent in the year 1990 at the Registrar’s Office Mombasa and was issued with a Marriage Certificate under the Marriage Act Cap 150, Laws of Kenya. He produced the Marriage Certificate as evidence of the marriage. He further stated that they were blessed with the children mentioned in the petition and lives with them. He added that the respondent deserted the matrimonial home in the year 2002 leaving him with the children. In the year 2009, she went to his house and took the said children with her and filed the said children’s case at Tononoka Court. The court however, granted the petitioner custody of the said children.

The petitioner further testified that the period the respondent has been in desertion is too long and resumption of cohabitation is no longer possible. In his view his marriage to the respondent has irretrievably broken down.

Having considered the evidence adduced before me, which evidence was not controverted, I am satisfied that the petitioner has established the ground of desertion. The respondent left the petitioner in the year 2002 and was, at the time of lodging this petition, in desertion of the petitioner for a period of nearly seven (7) years. In my judgment, there is no hope for this marriage. I see no chance of the respondent ever resuming cohabitation with the petitioner. I

therefore find and hold that the marriage between the petitioner and the respondent has irretrievably broken down. The marriage, the subject matter of these proceedings is accordingly hereby dissolved. Decree nisi shall issue forthwith and the same to be made absolute after the statutory period.

I make no order as to costs.

Judgment accordingly.

DATED AND DELIVERED AT MOMBASA THIS 30TH DAY OF AUGUST 2010.

F. AZANGALALA

JUDGE

Read in the absence of the parties.

F. AZANGALALA

JUDGE

30TH AUGUST 2010