



**REPUBLIC OF KENYA**

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

**Divorce Cause 60 of 2008**

**MJ.....PETITIONER**

**VERSUS**

**PCB.....RESPONDENT**

**J U D G M E N T**

On the 5<sup>th</sup> day of December 2001, MJ, the petitioner herein and PCB solemnized their marriage at the Registrar's offices, Mombasa under the marriage Act. On the 15<sup>th</sup> day of September 2008, MJ took out a petition in which she sought for the marriage to be dissolved on the grounds of cruelty and desertion. When served, PCB, filed a reply to the petition and a cross-petition seeking to have the same marriage to be wound up. The petitioner and the Respondent each prayed for shared custody of the children of the marriage.

At the hearing of this petition, the Petitioner and the Respondent each testified without calling for the evidence of independent witnesses. MJ produced before this court as an exhibit in her evidence the marriage certificate to prove that her marriage with the Respondent on 5.3.2001 was under the Marriage Act. This fact was not disputed by PCB. The Petitioner told this court that they lived together with the Respondent in W1 in D before moving to live in W2 then M1 Flats and now M2. The couple is blessed with three children namely K, S and B. The petitioner stated that the Respondent moved out of the matrimonial home in 2004. She said she occasionally spotted him at Taro Supermarket behind Diani Beach Resort. She claimed that the Respondent simply deserted the matrimonial without giving any reasons. The petitioner lives with the children. She prayed for an order dissolving the marriage, an order of maintenance and for shared custody of the children.

PCB admitted having deserted the matrimonial home. He said their marriage has irretrievably broken down. He said he was ready to continue to pay the monthly maintenance he has been making. It is the evidence of the Respondent that he left the matrimonial home because the petitioner fought and occasionally insulted him. PCB summed up his evidence by stating that the marriage did not simply work. He did not blame his wife (Petitioner) for the failure of the marriage. He said he was ready to continue paying Kshs.30,000 p.m. as maintenance for the children.

I have considered the evidence tendered in support and against the petition and the cross-petition. What appears to have been admitted is the fact that the Respondent deserted the matrimonial home in 2004. It is the evidence of the Respondent that he left the Matrimonial home because the Petitioner had insulted and fought him. He withdrew the allegations later and preferred to state that the marriage did not work out. The petitioner and the Respondent agree again that the marriage has irretrievably broken down. After a careful consideration of the evidence I am satisfied that the ground for desertion has been proved to the required standards in matrimonial causes. The Respondent willfully deserted the matrimonial home without any lawful excuse. He simply walked out. He did not give any evidence to suggest that the petitioner was guilty of constructive desertion. I am also convinced that the marriage has irretrievably broken down hence there is nothing left to sustain it. In the end I grant the order dissolving the marriage. A decree nisi be issued and be made absolute within 4 months from the date of this decision. The parties seem to agree to have shared custody of the children. They also agree that the Respondent continues to pay maintenance for the children in the sum of Kshs.30,000/- per month. None of the parties insisted on costs. I allow the order on custody and maintenance as prayed with no order as to costs.

**Dated and delivered at Mombasa this 21<sup>st</sup> day of May 2009**

**J. K. SERGON**

**J U D G E**

In open court in the presence of Mr. Omulele h/b Mrs. Kipsang

N/a for Respondent