



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MOMBASA**

**Divorce Cause 53 of 2007**

**HPW.....PETITIONER**

**VERSUS**

**WAAA.....RESPONDENT**

**JUDGMENT**

The petitioner, HPW and **WAAA**, were married on 4<sup>th</sup> April 2003 under the Marriage Act (Cap 150 Laws of Kenya). They are blessed with one child, **TW**, a daughter who, at the time of lodging this petition was aged five years. After the celebration of the marriage, the couple lived in Mombasa in Nyali.

The marriage experienced difficulties and on 9<sup>th</sup> January 2007, the respondent left the petitioner. The petitioner then lodged this petition for divorce on 31<sup>st</sup> October 2007 on the grounds of desertion and adultery. In the petition the petitioner avers that on 9<sup>th</sup> January 2005 the respondent deserted the matrimonial home and has since not returned to the petitioner. It is also averred that, since the celebration of the marriage, the respondent has been having extra marital affairs with her boy friends which ended in her having a child out of wedlock in August 2007.

The respondent has filed no answer to the petition. The petition came up for hearing on 7<sup>th</sup> May 2009 when the petitioner testified that contrary to the averment made in the petition, the respondent had actually deserted the matrimonial home on 9<sup>th</sup> January 2007 and not 9<sup>th</sup> January 2005.

The petitioner further testified that before her desertion, the respondent committed adultery with her boy friends and spent several nights outside the matrimonial home with the said boy friends and in August 2007 she gave birth to a child out of wedlock. It was the petitioner's further testimony that since January 2005, he had had no sexual relationship with the respondent and in his view, his marriage with the respondent has irretrievably broken down. He attempted reconciliation to no avail. In those circumstances, the petitioner prayed for dissolution of his marriage with the respondent.

With regard to the child of the marriage, the petitioner testified that a Children's Court had ordered joint custody and he maintained her.

Having heard the petitioner's testimony which was uncontradicted, I find that the petitioner has established both grounds of desertion and adultery alleged in the petition. I further find and hold that the marriage celebrated between the petitioner and the respondent has irretrievably broken down. I order that the marriage be and is hereby dissolved. Decree nisi should issue forthwith. The same to be made absolute after one month thereafter.

I make no order as to costs.

Orders accordingly.

**DATED AND DELIVERED AT MOMBASA THIS 13<sup>TH</sup> DAY OF MAY 2009.**

**F. AZANGALALA**

**JUDGE**

Read in the presence of:-

Mogaka holding brief for Omwenga for the Petitioner.

**F. AZANGALALA**

**JUDGE**

**13<sup>TH</sup> MAY 2009**

