



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI (MILIMANI LAW COURTS)**  
**DIVORCE CAUSE 10 OF 2007**  
**DLK ..... PETITIONER**  
**VERSUS**  
**MWK ..... RESPONDENT**  
**JUDGMENT**

The Present petition was certified as a defended cause as the Petitioner and the Respondent both filed their petition and cross-petition, while denying allegations leveled against each.

On the day of hearing the Petitioner opted to give evidence on and relied on the ground of desertion to seek the order of dissolution of the marriage.

The parties were married on 5<sup>th</sup> April, 2000 under the Marriage Act (Cap 150). They cohabited as husband and wife at Nairobi only upto September 2003 and did not have any issue of the marriage. According to the Petitioner, the Respondent without any reasonable cause, and him having not given any cause to the event, the Respondent left the matrimonial home in the month of September, 2003. The efforts to reconcile thence have failed. The Respondent did not resume cohabitation since that time.

The Petition by the husband/Petitioner was filed on 26<sup>th</sup> January, 2007, after the lapse of three year since the desertion. He reiterated that their marriage has, since the desertion, irretrievably broken down.

He denied that he has filed or prosecuted the petition in collusion with the Respondent and prayed for orders of dissolution of the marriage.

In cross-examination, he emphasized that since her desertion, they have not communicated with each other. He reiterated that she just left the matrimonial home and that their marriage was not very congenial one.

The Respondent after the close of the Petitioner's case, chose not to adduce any evidence.

With this straight forward evidence before me I do find that the marriage between the two parties herein has totally broken down without possibility of any reconciliation, and that the Respondent left the matrimonial home and deserted as averred by the Petitioner.

The petition has been duly filed after the lapse of three years since the desertion of the Respondent. Thus the Petitioner has proved his case as per section 8(1)(b) and Section 10 of the Matrimonial Causes Act (Cap 152).

I thus grant the decree nisi to the Petitioner of the dissolution of the marriage with further direction that this decree nisi be made absolute within 120 days from the date hereof.

I shall also not make any order on costs.

Dated, Signed and delivered at Nairobi, this 4<sup>th</sup> day of June, 2009.

**K.H. RAWAL**

**JUDGE**

**4.6.09**