



REPUBLIC OF KENYA

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

**Divorce Cause 64 of 2008**

**L.K.J.....PETITIONER**

**VERSUS**

**M.N.M.....**

**RESPONDENT**

**JUDGMENT**

The Petitioner – **L.K.J** and the Respondent **M.N.M** were married on 26<sup>th</sup> June, 1987 under the Marriage Act (Cap 150 Laws of Kenya). They have four children V.K, K.K, A.M 1 and A.M 2. All the children except A.M 1 are now adults. A.M 1 is now 14 years of age. After the marriage, the couple lived and cohabited at Majengo, Kiembeni, Likoni and Mwembe Tayari in Mombasa. The petitioner is a business woman and the respondent is a pharmacist. Currently, the petitioner resides in Tudor Mombasa while the respondent lives in Ukunda.

The marriage experienced problems and on 26<sup>th</sup> September, 2008 the petitioner lodged this petition for divorce on grounds of desertion and cruelty.

On being served, the respondent filed an answer in which he denied the allegations of desertion and cruelty. On 19<sup>th</sup> December, 2008 the Deputy Registrar issued his Certificate that the pleadings were proper and that the petition be heard in Mombasa.

When the cause came up for hearing on 23<sup>rd</sup> July, 2009 only the Petitioner testified. She testified that since the celebration of their marriage they lived and cohabited as husband and wife in various places and had the children mentioned in her petition. Unfortunately, in the year 2000, the respondent left the matrimonial home and has never returned. In the petitioner's view, there is no hope of their ever living together again. Their marriage in her view, has irretrievably broken down and should be dissolved. The petitioner prayed that she be given the custody care and control of the said A.M 1 but the respondent be allowed unlimited access. She abandoned the prayers for maintenance and alimony.

Having considered the evidence adduced before me I am satisfied that the petitioner has established the ground of desertion. The uncontroverted evidence is that since the year 2000, the respondent has not resumed cohabitation with the petitioner. It is now about 9 years since. I therefore find and hold that the respondent is in desertion of the petitioner. The marriage between the petitioner and the respondent has irretrievably broken down and is hereby dissolved. Decree nisi shall issue forthwith and the same shall be made absolute after the statutory period.

The petitioner is granted custody care and control of the child A.M 1. The respondent shall however,

have unlimited access to the said child. Each party to bear his/her own costs.

Orders accordingly.

**DATED AND DELIVERED AT MOMBASA THIS 3<sup>RD</sup> DAY OF SEPTEMBER, 2009.**

**F. AZANGALALA**

**JUDGE**

Read in the presence of:-

Marcha holding brief for Osino for the petitioner and Njoroge for the Respondent.

**F. AZANGALALA**

**JUDGE**

**3.9. 2009**