



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI (NAIROBI LAW COURTS) Divorce Cause 9 of 2009

M DJ..... PETITIONER

V E R S U S

SWA..... RESPONDENT

J U D G M E N T

Before me is a Petition dated 31.12.2008 filed by M/S Kosgei & Masese advocates for the petitioner named as **M DJ** The respondent is named as **SWA**.

In the petition the petitioner seeks for orders that-

- 1. The marriage be dissolved.*
- 2. The petitioner be awarded custody, care and control of the children of the marriage namely RUD and GMD.*
- 3. The respondent do pay the costs occasioned by this petition.*

The ground of the petition is desertion. The particulars of desertion were given in the petition.

After service, a consent dated 16th February, 2009 and filed on 17th February, 2009 was signed between Kosgey & Masese advocates for the petitioner and the respondent **SWA**. In the consent it was agreed that the petitioner be awarded the custody, care and control of the two children.

The respondent however, did not file a response to the allegations on the marriage and the request for dissolution of the same. The matter proceeded to hearing as an undefended cause. Only the petitioner testified.

The particulars of desertion are that the respondent has from the year 200 to date, without any provocation, stayed away from the matrimonial home and that efforts towards reconciliation have failed and that the marriage has broken down irretrievable.

Under section 8(1) (b) of the Matrimonial Causes Act, (Cap 152), a petition for dissolution of marriage can be filed after the lapse of three years from the date of desertion. In our present case, the desertion was

in 2000 and the petition was filed on 14th January, 2009. That was a period of more than three years from the desertion.

The respondent has not challenged the allegations and the evidence tendered against her. I am therefore of the view that the petitioner has proved the ground of desertion. I am of the view that the marriage has irretrievably broken down. I will dissolve the marriage. With regard to the children, there is a consent filed which I will record as part of the judgment. I will however not award costs as the respondent chose not to defend.

Consequently, and for the above reasons I order as follows-

1. *I issue a decree nisi for the dissolution of the*

Marriage between the petitioner and the respondent, to be made absolute after the lapse of six (6) months.

2. *I grant custody, care and control of the two*

Children of the marriage to the petitioner as prayed.

3. *Parties will bear their respective costs of the*

proceedings.

Dated and delivered at Nairobi this 19th day of November, 2009.

George Dulu

Judge.

In the presence of-

Mr. Masese for the petitioner

David Court Clerk.