

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU

Divorce Cause 10 of 2008

A.G.K.....PETITIONER

VERSUS

P.M.G.....RESPONDENT

JUDGMENT

The petitioner herein filed this petition on 18th July 2008, seeking to have his marriage between himself and the respondent dissolved, on the ground that the same has irretrievably broken down as a consequence of the respondent's desertion. He prays that he be granted the custody of one issue of the marriage, M.W who is handicapped and permanently confined to a wheelchair. Costs of the petition are also sought.

The respondent filed an Answer to Petition and Cross-Petition dated 4th August 2008 but which she later withdrew by way of a letter filed in this court dated 22nd January 2009. The petition therefore proceeded ex-parte as though undefended.

The petitioner, who testified orally in court, told this court that his marriage to the respondent was entered into in 1979 under the Kikuyu Customary Law. The couple was blessed with three children, all of whom are now adults. Save for M.W who is blind and disabled the two sons of the union, H.K and P.M are independent and live on their own.

It was the petitioner's evidence that the respondent has persistently deserted the matrimonial home for the last 26 years of the union, leaving the petitioner to care for the children. She gave no reasons for the desertions and the petitioner neither caused nor condoned the same. He recounted incidents of such desertions in 1983, 1985, 2007 and at the present time when she is said to have taken MW with her, only to leave her under the care of a relative. The petitioner would wish to have custody of MW given to him so that he can take care of her.

As earlier stated, the petition and the grounds thereof have not been challenged. There has been no rebuttal of the petitioner's evidence which clearly means that the petitioner has established the grounds for the dissolution of the marriage which, in view of the facts, has no doubt broken down irretrievably.

In the premises I hereby allow the petition and grant custody of M.W to the petitioner. I also award costs of the petition to the petitioner with interest at court rates.

A decree nisi to issue.

Dated signed and delivered at Nakuru this 16th day of November 2009

M. G. MUGO

JUDGE