



M.K.P..... PETITIONER

VERSUS

J.N.K..... RESPONDENT

JUDGMENT

On 27.06.06 the petitioner filed petition dated 26.06.06 praying for the following orders:-

- a) That the marriage between the petitioner and respondent be dissolved and the petitioner be allowed to divorce the respondent.
- b) That the costs of the petitioner be paid by the respondent.
- c) That such further or other relief be granted as will meet the ends of justice in this cause.

The petitioner was represented in these proceedings by the firm of Kantai & Co. Advocates and Mr M.M. Kinyanjui of that firm appeared for the petitioner at the hearing of the petition but there was no appearance for the respondent.

Stanley Mworira M'Mbui, process server swore an affidavit of service on 10.07.06 and deponed that on 08.07.06 he proceeded to the respondent's residence at [particulars withheld] and served her with a copy of notice to appear within 8 days and that she accepted service but declined to sign the process server's copy. Upon the respondent's failure to enter appearance within the stipulated period or failure to file any answer to the petition thereafter, the petitioner did on 21.09.06 file chamber summons dated 04.08.06 essentially seeking to have the matter proceed to hearing as an undefended cause. The chamber summons was fixed for hearing on 22.11.06. The same process server, Stanley Mworira M'Mbui swore another affidavit of service on 23.08.06 and filed it on 21.09.06 deponing that he served the chamber summons upon the respondent at her aforesaid residence on 19.08.06 and that she accepted service but declined to sign the process server's copy. Subsequently the petitioner through her advocates took 22.03.07 for hearing of his petition. The same process server, Stanley Mworira M'Mbui swore yet another affidavit of service on 05.01.07 which he filed on 15.03.07 deponing that he served the hearing notice upon the respondent at her residence on 20.12.06 and that she once again accepted service but declined to sign the process server's copy. This matter, therefore, eventually proceeded as an undefended cause and only the petitioner testified before this court.

Salient facts pertaining to substantive aspects of the cause may be summarized as under.

The petitioner and respondent got married to each other on 26.08.95 at St Paul's Catholic Chapel, Nairobi under the Marriage Act, Cap. 150. They cohabited in Kajiado District for about 8 months. There were no issues of the marriage. It was the petitioner's testimony that he, of his volition, opened a shop for the respondent in Kajiado District. However, the respondent's mother started making demands, e.g. that the petitioner should open a shop for the respondent in Nairobi. The business started going down and eventually collapsed. One evening around November, 1996 the petitioner returned home and found the

respondent had left. The petitioner, who comes from Meru, said he looked for the respondent in Nairobi without success. Petitioner then went to look for respondent at her parents' home in Meru town also without success. In 2000, acting on information, petitioner visited Meru and found the respondent had a baby girl, G.G born in February, 2000. The petitioner told the court that he and the respondent had never been in contact between November, 1996 when the respondent left the matrimonial home and the time he found the respondent with the baby in 2000 when the respondent admitted that the baby was hers. The petitioner concluded that the respondent got the baby through adulterous association with another man. The petitioner reiterated his substantive prayer for dissolution of his marriage to the respondent on the ground of desertion and abandoned his prayer for costs.

I have given due consideration to the petition and the ground upon which it is based.

As recorded earlier, the respondent was duly served with the requisite court process in this matter but she never bothered to file any answer to the petition. The petitioner testified before this court and repeated his averment that the respondent left the matrimonial home around November, 1996 and has never returned to the matrimonial home to date. It was the petitioner's case that the respondent left the matrimonial home without cause or justification and that she has committed the matrimonial offence of desertion. The accusations levelled by the petitioner against the respondent remain uncontroverted and I have no reason not to accept the petitioner's evidence thereon.

Section 8 (1) of the Matrimonial Causes Act, Cap.152 provides, *inter alia*, as follows:

'8. (1) A petition for divorce may be presented to the court either by the husband or the wife on the ground that the respondent —

(b) has deserted the petitioner without cause for a period of at least three years immediately preceding the presentation of the petition'.

I accept the petitioner's evidence that he and the respondent got married to each other on 26.08.95 and that respondent left the matrimonial home in or around November, 1996 and has never returned there. The petition herein was filed on 27.06.06, i.e. some 9 or so years after the respondent left the matrimonial home. I find that the respondent left the matrimonial home without cause and that she committed the matrimonial offence of desertion. Accordingly, I pronounce a decree of divorce and order that the marriage between the petitioner and respondent be and is hereby dissolved. *Decree nisi* shall issue forthwith, the same to be made absolute after expiry of a period of 30 (thirty) days upon application therefor. As the petitioner abandoned his prayer for costs, no order is made as to costs.

Orders accordingly.

Delivered at Nairobi this 22nd day of January, 2008.

B.P. KUBO

JUDGE