



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA

Divorce Cause 20 of 2007

M.C.B PETITIONER

- Versus -

S.P.B RESPONDENT

J U D G M E N T

By a petition dated 2nd April, 2007, and filed in court on an undisclosed date in the same month, the petitioner prays for two orders:-

- (a) *That the marriage between the petitioner and the respondent be dissolved; and*
- (b) *Any further relief as this Honourable Court may deem it fit and just to grant.*

Pursuant to an application by the Petitioner's Advocates dated 11th May, 2007, this court on 21st June, 2007, granted to the Petitioner leave to serve the petition and notice to appear on the Respondent by substituted service. The said service was to be effected by way of registered post to the Respondent's last known address in Switzerland. According to the Certificate of Posting a registered postal article which is on record, the registered letter was posted on 27th June, 2007. The Respondent was given 20 days within which to enter appearance. To date, she has not entered appearance. The hearing of the petition therefore proceeded ex parte.

In his sworn evidence, the Petitioner testified that the marriage between him and the respondent was solemnized on 28th December, 1996, in Mombasa District of the Coast Province. He produced a certified copy of an entry of marriage as an exhibit. After the marriage, the couple cohabited as husband and wife in several places including Mtwapa, Kenya. After a few years, irreconcilable differences arose between the spouses leading to a breakdown of the marriage, consequent whereupon the Respondent left the matrimonial home in June, 2000. Since then, the parties have not cohabited, and all efforts to reconcile the parties went begging. In these circumstances, it is the Petitioner's case that the marriage has irretrievably and irrevocably broken down, and that the legal union between the spouses should be dissolved. The marriage had not been blessed with any issue.

Under Section 8(1) of the Matrimonial Causes Act, Cap. 152 of the Laws of Kenya, a petition for divorce may be presented to the court either by the husband or by the wife on the ground that, inter alia, the

respondent has deserted the petitioner without cause for a period of at least three years immediately preceding the presentation of the petition. In the instant case, the parties entered into a marriage union on 28th December, 1996. After three years and a half, the respondent left the matrimonial home, probably never to return. The desertion had lasted nearly six years by the time this petition was filed in court. These conditions clearly spelt out the matrimonial offence of desertion for which divorce may be granted.

After being served with the petition and notice to enter appearance, the respondent did not bother even to enter appearance. This probably demonstrates the contempt with which she holds this marriage. It may be her way of telling the petitioner to do what he will; she won't care a fig.

On account of the foregoing, I am satisfied that the petitioner has established that the respondent is guilty of the matrimonial offence of desertion, and that his marriage with the respondent has irretrievably broken down. For these reasons, he is clearly entitled to a divorce as prayed. I accordingly make the following orders:-

1. *THAT the marriage solemnized between the petitioner and the respondent herein in the Mombasa District of the Coast Province on 28th December, 1996, be and is hereby dissolved.*
2. *Decree nisi to issue.*
3. *Decree nisi to become absolute upon application after three months.*
4. *Each party to bear its own costs.*

Dated and delivered at Mombasa this 6th day of June, 2008.

L. NJAGI

JUDGE