



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI (MILIMANI LAW COURTS)**  
**DIVORCE CAUSE 16 OF 2006**

**J.M.K..... PETITIONER**

**VERSUS**

**S.N.M..... RESPONDENT**

**JUDGMENT**

This petition filed by the husband was certified as an undefended cause by the learned Deputy Registrar.

The petition which was filed by the Petitioner in person, though not incompetent lacked the compliance of the Matrimonial Causes Act (Cap 152) and Rules made thereunder.

The Deputy Registrar hereby is encouraged to see that pleadings are in compliance with the provisions of law.

Be that as it may, the Petitioner married on 4<sup>th</sup> February, 1989. They stayed at his place in Nyeri after the marriage up to 4<sup>th</sup> October, 1989 as the Respondent refused to beget a child from him on the ground which was instilled in her mind by her relatives, that he had been imprisoned previously.

Thereafter according to him the Respondent got married (*sic*) to another person and he followed the suit.

It took the Petitioner 16 years to file this petition which is not encouraged by the law.

The facts of this case perturbed me with a hint of amusement. I must confess that I have yet to come across this kind of Divorce Cause where the parties have parted and gone ahead without recourse of the law to find their respective new partners in life.

After soul searching, and seeing that marriage has been irretrievably broken down, I considered to place this cause on the ground of desertion and adultery. The Respondent had left the Petitioner after refusing to beget a child from him and then started living in adultery with the other man (although his details are not disclosed).

On the other hand the Petitioner is deemed to have averred that the Respondent was accessory to his

committal of adultery due to her desertion. He waited for her to come back even before filing this petition.

With the facts of this case, I can find that the Respondent had deserted the Petitioner without reasonable cause. Her desertion has led the Petitioner to commit adultery in a marriage which lasted for about eight months.

I am striving to make a case from the pleadings and evidence, the former not being in strict compliance with the provisions of law, as observed herein before.

It is evident that the marriage is irretrievably broken and since end of 1989 was only on paper. In the present age, this kind of marriage is not justifiably forced upon a spouse.

The Petitioner has stated that both of them are residents of Kenya, that no other proceedings is filed in respect of the marriage, that he has not condoned adultery and that the petition is neither presented nor prosecuted in collusion with the Respondent.

In view of the premises aforesaid, I order that the marriage solemnized between the parties be dissolved, and decree nisi be made absolute within 60 days.

I shall not make any order on costs.

Dated, signed and delivered at Nairobi this 24<sup>th</sup> day of July, 2008.

**K.H. RAWAL**

**JUDGE**

**24.7.08**