

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT NYERI

Divorce 1 of 2004

P M KI.....PETITIONER

VERSUS

S W W.....RESPONDENT

J U D G M E N T

P M K, hereinafter referred to as “*the petitioner*” has petitioned this court for the dissolution of the marriage hitherto subsisting between himself and one S W W, hereinafter referred to “*the respondent.*” The grounds upon which the petitioner seeks to be released from the scourge of this marriage is desertion, adultery and cruelty. However at the hearing of the petition which was undefended the petitioner elected to abandon adultery and cruelty as grounds for divorce. Instead he elected to pursue the divorce on the singular ground of desertion.

The petitioner married the respondent at the office of the Registrar of Marriages, Nairobi on 4th November, 1997. After the marriage, the two cohabited as man and wife at [Particulars withheld] estate in Nairobi until 1998 when the respondent deserted the matrimonial home aforesaid. The couple was blessed with two children, E W K and G K. At the time of the solemnization of the marriage, the petitioner was a pump attendant at Wilson airport BP Petrol Station, Nairobi whereas the respondent was a housewife.

Because of the desertion aforesaid, the petitioner believes that the marriage had irretrievably broken down and he ought to be released from it. The petitioner has also pleaded that there was no collusion and or connivance between him and the respondent in filling this petition and that he had not been assessor to and or condoned the respondent’s desertion.

When the petition was served on the respondent, she neither entered appearance nor filed an answer to the same. Accordingly on 24th May, 2006, a registrar’s certificate was issued to the effect that the hearing would be in this court for ½ day and that the respondent be served with a hearing notice. On 10th July, 2008 the cause came up for hearing and the respondent was absent. Accordingly, I allowed the cause to proceed to hearing as undefended cause as I was satisfied that she had been served with the hearing notice.

Only the petitioner testified in support of the petition. He testified that he married the respondent on 4th November, 1997 and produced a copy of the marriage certificate to back up his claim. He also testified as to their place of cohabitation and number of issues they were blessed with from the marriage. However, one day in May, 1998 the respondent suddenly left the matrimonial home without the knowledge and consent of the petitioner. 2 weeks later, the petitioner went to where the respondent was working and on asking her why she had left the matrimonial home, she retorted that because the petitioner was now unemployed, she could not continue sustaining him and that it did not matter that they had wedded. She refused to resume cohabitation and the last that the petitioner heard of her was that she was now married to another man in Kisii town and they even had a child together. This being the state of affairs, the petitioner pleaded for divorce pointing out that he was not in any way responsible for the respondent’s desertion. Neither was he in constructive desertion.

Desertion is one of the five grounds of divorce recognized under the Marriage Act and the Matrimonial Causes Act. The petitioner’s marriage having been solemnized at the Registrar of Marriages Offices, Nairobi, it is governed by these Acts of Parliament therefore. For a party to successfully sue for divorce on grounds of desertion, he/she must demonstrate by evidence that the desertion has been for three years or more before the presentation of the petition for divorce on that ground. He must also demonstrate that he played no role in the desertion, that is to say that the petitioner is not in constructive desertion. In the circumstances of this case there is uncontroverted evidence that the respondent deserted the petitioner in May, 1998 and has since not resumed cohabitation. When the petitioner attempted reconciliation, he was waved away unceremoniously and told that he was at liberty to commence divorce proceedings to dissolve the marriage. The instant divorce petition was filed on 16th November, 2004 long after the expiry of the mandatory 3 year period. That being the case, I do not think that much is left of this marriage. In the circumstances it is only fair and indeed just that the marriage be dissolved as prayed by the respondent. I have not been shown anything that may stand in the way of such an order. I am satisfied that there has been no collusion and connivance in the

presentation and prosecution of this petition between the petitioner and the respondent. Similarly I do not think that the petitioner has been accessory to or condoned the respondent's desertion. Accordingly, a Decree Nisi shall forthwith issues dissolving the marriage hitherto subsisting between the petitioner and the respondent which shall be made absolute after the statutory period. I make no order as to custody, maintenance and or costs as the petitioner did not ask for them.

Dated and delivered at Nyeri this 9th day of October, 2008.

M.S.A. MAKHANDIA

JUDGE