



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI (NAIROBI LAW COURTS)**

**Divorce Cause 30 of 2005**

**E.W ..... PETITIONER**

**VERSUS**

**R.N.N ..... RESPONDENT**

**JUDGMENT**

E.W who is the petitioner in this cause seeks an order to have his marriage to R.N.N dissolved on the ground that she deserted him in the year 2000.

R.N.N who denies having deserted E.W alleges in her answer and cross petition that he was the one who actually deserted their matrimonial home in the aforesaid year, and she urges this court to dismiss his petition but to grant her a divorce and to order that he provides for her by way of maintenance. She also prays for costs.

Briefly, the two got married on 29.4.1995 at the A.I.C. Church, Kiambu, but he moved out of their matrimonial home during the year 2000 and they have lived apart and he does not know where his wife has lived since then. There were no issues to the marriage.

It was his evidence that they had a good marriage initially but that though he was a teetotaler, and though she consumed alcohol during their courtship, his hopes that she would change her ways after their marriage were in vain for not only did she continue to partake, but that she kept late nights; that this led to frequent quarrels; that she denied him his conjugal rights, which also offended him and which made him leave their matrimonial home as

aforesaid. In his view, since all efforts to reconcile have proved fruitless, their marriage has broken down and should be dissolved.

R.N.N conceded that they quarreled frequently, for her husband who would come home late, would never pick her up from her place of work; would spend weekends away from home with the excuse that he would be at his mother's place. It was also her evidence that he was never open to discussions over the issues; and would treat her with hostility, which treatment and lack of communication led to a strenuous relationship; he collected his things in the year 2000 and left. She called him with a view to reconciliation but he declined. She urged the court to dismiss his petition. She however prayed that their marriage be dissolved but abandoned her prayers for maintenance and costs for the suit.

Each has reiterated that he did not condone the actions by the other, and nor they connive to bring forth this action.

Mr. Njiraini, the learned counsel for the petitioner was of the view that neither party was willing to take the other back. But he urged the court to find that the respondent had treated his client with cruelty and he thus urged the court to dissolve the marriage.

The respondents learned counsel, Mr. Runo pointed out that his client who had also pleaded desertion by the petitioner had established that the petitioner had no good reasons to desert the matrimonial home. He was also of the view that the two cannot be reconciled and that their marriage ought to be dissolved.

I have considered the pleadings and the evidence herein, and I find that the petitioner whose grounds for seeking dissolution of their marriage were cruelty and desertion has not convinced me on a balance of probability that the respondent either treated him with cruelty, or that she deserted the matrimonial home, indeed it became very clear that if anyone was guilty of cruelty, it was him for he was well aware of her tendency to consume alcohol even before they got married, his assertions that he expected her to change after their marriage cannot hold any water, for you take him as you find him or her for that matter.

Be that as it may, apart from the one instance when she was late after attending her grandfather's funeral, the petitioner was not able to demonstrate any other occasions when she kept late nights. He was also not able to prove that she deserted the matrimonial home, because it was evident

that he had no intentions of returning, but I need not dwell on this particular issue for his counsel conceded that it was his client who had deserted the matrimonial home, and that he was not willing to go back. He has failed to prove his case and I do dismiss it accordingly.

R was however able to show, that he walked away from the matrimonial home without any justification in the year 2000; that her efforts to get him back proved futile. In any event he conceded to the fact that he deserted. That in my humble opinion amount to desertion on his part, I would for that reason find in that she has proved her case on a balance of probability.

Needless to say the fact that the two have lived apart for the last eight years, and it is clear that there would be no marriage to salvage.

I do on the other hand allow her prayer by grant her an order to dissolve her marriage to EW. A Decree Nisi should issue with liberty to apply after four months.

Dated and delivered at Nairobi this 12<sup>th</sup> day of November 2008

JEANNE GACHECHE

Judge

Delivered in the presence of:

Mr. Githara for the respondent.

No appearance for the petitioner.