



REPUBLIC OF KENYA

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

Divorce Cause 78 of 2006

E W LPETITIONER

VERSUS

J N M.....RESPONDENT

JUDGMENT

E W L, petitioned the court for divorce on ground of “constructive desertion”. She also prayed for custody of the two children of the marriage.

The petition and all relevant documents was served on the respondent, as per the affidavit of the respondent, but he failed to file an answer, prompting the petitioner to apply for a certificate from the Deputy Registrar of the Family Division.

Such certificate was issued on 23rd November 2006 and petition certified as an “**undefended**”.

In court during the hearing of the petition, the petitioner testified that she got married to the respondent on 30th June 2000 but filed the petition 6 years later on 8.6.2006.

She produced her marriage certificate as Ex 1and confirmed that there are 2 children of the marriage, whose details appear in paragraph 3 of the petition.

The petitioner and her husband lived in Ngong as shown in para 2 of the petition. The 2 have never had court proceedings regarding their marriage before.

The petitioner recalled that during their marriage, the respondent did not participate in the marriage. He was not involved in running the household and refused to give money for that purpose.

The couple stopped talking to each other in the house, and it was the petitioner who paid the children’s school fees, bought food for them and even their clothes. She also paid all the bills including house rent.

The couple had meetings with family members regarding these problems, and at such meetings, the respondent took the stand that he did not want to be told how to run his home.

The respondent finally left the matrimonial home in Ngong in June 2006 and never returned and also never communicated with the petitioner. The petitioner does not know where he is. She filed the petition when they were still living in the matrimonial house. He even showed her the divorce papers when they were served on him, and he left the matrimonial house soon thereafter, saying that he did not want to get involved with court summons.

The petitioner lives with the 2 children of the marriage. She asked court to grant her their care and control. She also confirmed that she has neither condoned nor connived at the Respondent's act of "**desertion**".

As the respondent chose not to contest this divorce petition when he was served, I found the petitioner's evidence uncontested and I believed it, and from it, found that it was the respondent who was in constructive desertion as he left the matrimonial house and never returned, and secondly, prior to his departure, he had failed and or neglected to support the family in anyway. I therefore proceed to grant an order dissolving the marriage between Emily Wawira Levorin and James Njau Muiruri, solemnized on 30th June 2000.

I also grant custody, care and control of the 2 children of the marriage to the petitioner, who opted to pay for the expenses she incurred in these proceedings.

Finally, I direct that the decree nisi do issue today, and the same be made absolute within a period of 30 days from today.

Dated at Nairobi this 26th day of April, 2007.

JOYCE ALUOCH

JUDGE