



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**

**AT NYERI**

**Divorce Cause 4 of 2005**

**J N M.....PETITIONER**

**VERSUS**

**I M M .....DEFENDANT**

**J U D G M E N T**

Mrs JNM, the petitioner herein married, the respondent, IMM on the 15<sup>th</sup> December, 1979 at Katheri Methodist Church, Meru. Soon after marriage they relocated to Nyeri where they set up their residence and cohabited thereat until 2001 when their union began to crack under the weight of problems which according to the petitioner were instigated by the respondent.

During the subsistence of the marriage however, the couple were blessed with two children **EM** and **DK** now aged 28 and 25 years respectively. Whereas the petitioner is a nurse by profession, the respondent is a businessman.

Since 2001, there has been according to the petitioner no peace in the marriage. Indeed the marriage has irretrievably broken down and there is no hope of reconciliation. It is for this reason that the petitioner seeks the dissolution of the union on the grounds of desertion, adultery and cruelty. In the Petition of Divorce, the petitioner has in detail set out the particulars of desertion, cruelty and adultery. However I do not think that I need to consider all the grounds of divorce set out in the petition as aforesaid in order to decide the fate of this petition. I think only one ground will suffice. To my mind that ground is desertion.

The cause proceeded to hearing as undefended cause. The respondent upon being served with the petition never entered appearance nor filed an answer to the petition. Accordingly and by virtue of the directions and registrars certificate given herein on 17<sup>th</sup> January, 2007, the cause proceeded as undefended cause.

In support of desertion as ground of Divorce, the petitioner who was the only witness in the proceedings testified that she last saw the respondent sometimes in the year 2001 when he parked his belongings and left the matrimonial home in a huff. Earlier he had told the petitioner to the face that he wanted a divorce as he had found an Ethiopian lady whom he intended to marry. Since then the respondent has not resumed cohabitation. The petitioner was categorical that she was not at all responsible for the respondent's actions aforesaid. She did not make conditions in the matrimonial home so hard for the respondent so that moving out became an option available to the respondent. In other words the desertion from the matrimonial home by the respondent was voluntary and deliberate. It was not forced

on the respondent by the petitioner. Accordingly the desertion was not constructive but direct and deliberate.

Under section 8(1) (b) of the matrimonial Causes Act desertion is a ground for divorce. It is provided therein that:

**“.....A Petition for divorce may be presented to court either by the husband or the wife on the ground that the respondent,**

**(a) .....**

**(b)Has deserted the petitioner without cause for a period of at least three years immediately preceding the presentation of the petition, or.....”**

**(c) .....**

**(d) .....**

So there it is. However for one to successfully base his or her petition on this ground, satisfactory evidence must be led to show that the deserter had no cause to desert the petitioner and that the desertion must have occurred at least three years before the filing of the petition for divorce. What do we have here!

On the unchallenged, undisputed and uncontroverted evidence of the petitioner, it is clear that the respondent had made up his mind to ditch the petitioner for an Ethiopian lady. To achieve this goal, the respondent came to the matrimonial home sometimes in 2001, picked up an unnecessary quarrel with the petitioner and thereafter packed his things and left. Attempts at reconciliation presided over by the couple’s respective parents yielded no fruits at all. It is the evidence of the petitioner that since then the respondent has not pitched camp in the matrimonial home. From the foregoing it is abundantly clear to me that the respondent had cause to leave the matrimonial home. However that cause had nothing to do with the petitioner. The cause was for his own self-aggrandisement. That is not a cause recognised and or contemplated by the provisions of section 8(1) (b) of the Matrimonial Causes Act. Accordingly and I am saying therefore that the respondent deserted the petitioner for no lawful or just cause. The desertion was in 2001. This petition was filed on 24<sup>th</sup> August, 2005. Clearly therefore three years had elapsed after the desertion before the petitioner lodged the instant petition. The petitioner has therefore once again met the last requirement set out section 8 (1) (b) regarding the period required before a petition for divorce on the grounds of desertion can be entertained by court.

All said and done, I am satisfied that the petitioner has successfully proved that their marriage solemnized as aforesaid has irretrievably broken down on account of desertion. It should be dissolved therefore. However before I do so I need to be satisfied that the petitioner has not colluded, been accessory to, connived at or condoned the desertion by the respondent complained of. On the evidence before me, I am satisfied that the petitioner did none of those things. Accordingly I would grant the petition for divorce. I order that the marriage hitherto subsisting between the petitioner and the respondent be and is hereby dissolved. There will be no order as to costs, nor consideration for maintenance as the petitioner made it categorically clear in her evidence that she wanted nothing to do with the respondent. Similarly the issue of custody does not arise as the two issues of the marriage are all adults. In the end then a decree nisi shall forthwith issue to the petitioner to be made absolute after the expiry of six (6) months from the date hereof.

Orders accordingly.

***Dated and delivered at Nyeri this 12<sup>th</sup> Day of July 2007.***

.....

**M.S.A. MAKHANDIA**

**JUDGE**