



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

**DIVORCE CAUSE 33 OF 2006**

**IN THE MATTER OF THE MATRIMONIAL CAUSES ACT**

**BETWEEN**

**T.P.C.....PETITIONER**

**VERSUS**

**F.D.....RESPONDENT**

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

Terrence Patricia Cullen, the Petitioner prayed the court for an order of dissolution of marriage to his wife Florence Daniel, on grounds of desertion whose particulars he gave in para 10 of the petition. The Petitioner also prayed for custody of the only child of the marriage, namely T. P.C., a boy, born in 1996.

The Respondent was served by substituted service, but she did not enter appearance or file an answer. The cause was therefore certified undefended by the Deputy Registrar.

The Petitioner got married to the Respondent on 18<sup>th</sup> March 1997, at the Registrar of Marriages in Nairobi.

The Petitioner is a British citizen working for gain in Nairobi, whilst the Respondent is a Kenya national.

The 2 lives and cohabited in Loresho Estate, Nairobi from 1997 – 2001, and they had one child; aged 10 years old.

The Petitioner complained that he has not seen his wife since September, 2001. He re-called that he left her asleep one morning but upon return to the house in the evening, she was gone, without having indicated that she would leave the house, but she has not returned to-date. She left behind the child of the marriage.

The Petitioner assumes that this was a happy marriage, so she did not understand why his wife left the house.

He knows her home in Kibwezi and has been there several times looking for her, but has not found her. Even her home people say they do not know where she is.

The Petitioner was depressed for a long time after his wife deserted him. He went for therapy, which made him feel much better. He lamented that his son misses the mother, very much as she has never

contacted either of them.

The Petitioner reported to the police that his wife was missing. They booked the report in the O.B. He produced an extract of it as an exhibit in court. The police put out enquiries, but the wife has never been found.

The Petitioner's job here in Kenya is finished and wishes to leave for Britain first, before going to West Africa where he has another job office.

He also produced newspaper cuttings showing that he advertised his wife missing about 3 times. He went back to the police to report his wife missing again in July, but she has not been traced. He surrendered her passport to the police last year, as she left it behind.

The Petitioner has not condoned his wife's desertion neither has he been accessory to it. The two were domiciled in Kenya before she deserted him. The Petitioner has been resident in Kenya since 1995.

The Petitioner's advocate made written submissions and quoted several decided cases which I have read through and considered.

I am taking into consideration the fact that the Petitioner's evidence has not been challenged. The Respondent was given an opportunity to come to court, but declined to do so.

I consider this a very unusual case where the Respondent just vanished from the matrimonial home leaving behind her son, and even a passport, a vital travel document. It is hard to understand what really happened. No wonder the Petitioner has been depressed over this incident! I appreciate the efforts he has made in an effort to trace his wife, but with no success. I am satisfied from the evidence on record that the Respondent did desert the Petitioner for no just cause, and still remains in desertion to-date. This is what has caused the breakdown of the marriage between this couple. I therefore proceed to grant an order dissolving the marriage between Terence Patrick Cullen, and Florence Daniel, solemnized on 18<sup>th</sup> March, 1997 at the Office of the Registrar of Marriages in Nairobi.

Further, I award the custody of young T.P.C, a son, to the Petitioner.

Further still, I direct that the decree nisi should issue straightaway today, and the same be made absolute within a period of **two weeks from today**. The Petitioner will pay his own costs of the petition.

**Dated at Nairobi this 3<sup>rd</sup> day of December, 2007.**

**JOYCE ALUOCH**

**JUDGE**