



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT NAIROBI (NAIROBI LAW COURTS)  
Divorce Case No. 34 of 2005**

**CATHERINE MUMBI KAMAU .....PETITIONER**

**VERSUS**

**WISDOM LENNY MBABAZI RUTUNA .....RESPONDENTS**

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

On 09.03.05 the Petitioner filed petition praying that:-

- (a) The marriage between the petitioner and the respondent be dissolved.
- (b) The respondent be condemned to pay the costs of this petition.

The petition is based on the matrimonial offence of desertion.

The petitioner's case may be summarized as under. She is a Secretary at the Faculty of Law, University of Nairobi while the respondent is a businessman living and working for gain also in Nairobi.

The respondent and petitioner contracted a statutory marriage under the Marriage Act (Cap.150) on 13.01.84 at the Registrar's office, Nairobi. The petitioner produced a marriage certificate to that effect. It is stated in the petition that after the marriage, the respondent and petitioner cohabited as man and wife at Umoja Estate within Nairobi. However, in her oral testimony before this court, the petitioner said the respondent and herself lived in Parklands, Nairobi after the marriage in 1984 and that thereafter they moved to park Road, also in Nairobi. There is a discrepancy but it is minor. Subsequently, the petitioner changed jobs, from teacher to secretary, and she and the respondent moved to Malindi, Kenya in 1992. There have been no issues of the marriage.

In early 1992, while in Malindi, the respondent, without giving any reason, moved out of the matrimonial home, returned to Nairobi and ceased to communicate with the petitioner. The respondent also stopped supporting the petitioner since moving out from the matrimonial home. The petitioner told the court that she has suffered mental torture from the embarrassment of being taken to be married to the respondent and carrying his name while she no longer is married to him.

It was the petitioner's further testimony that in early 1993 she too left Malindi and returned to Nairobi. While in Nairobi the petitioner met the respondent in an attempt to resolve the differences between her and him but the two of them could not agree. It was during these reconciliation attempts that the respondent disclosed to the petitioner that he was embarrassed by the fact that he and the petitioner had no children.

It is the petitioner's case that the respondent has since 1992 constructively deserted and willfully neglected her and that as a result of the foregoing:-

**(i) The respondent has failed, ignored and/or neglected to provide shelter and general upkeep (maintenance) for the petitioner with no contribution whatsoever or at all forthcoming from the respondent despite exhaustive mediation and interminable demand.**

**(ii) The respondent has failed to provide his love and guidance as a husband.**

**(iii) The respondent has denied the petitioner her conjugal rights and consortium.**

It is by reason of the foregoing that the petitioner has sought the prayers recorded at the first paragraph hereinabove.

The applicable law on the subject under consideration is the Matrimonial Causes Act (Cap.152). Section 8 thereof provides, *inter alia*, as follows:-

**‘8. (1) A petition for divorce may be presented to the court either by the husband or the wife on the ground that the respondent –**

**(b) has deserted the petitioner without cause for a period of at least three years immediately preceding the presentation of the petition’.**

The present petition dated 08.03.05 was presented to court on 09.03.05. The respondent moved out of the matrimonial home and deserted the petitioner in 1992, which is way beyond the minimum three-year requirement under the law.

The respondent was served by registered post with the petition and notice to appear in April, 2005 but he never entered appearance and never filed answer to the petition by the time the petition came up for hearing on 02.03.06. I take the respondent to have had no answer to the petition, which would in turn mean he deserted the petitioner without cause, within the meaning of section 8(1) (b) of the Matrimonial Causes Act. Desertion has been proved. Accordingly, I hereby pronounce a decree of divorce and order that the marriage between the petitioner and defendant be and is hereby dissolved. Decree nisi shall issue forthwith, the same to be made absolute after expiry of 30 (thirty) days upon application therefore . I grant the petitioner the costs of these divorce proceedings.

Orders accordingly.

Delivered at Nairobi this 27<sup>th</sup> day of March 2006.

**B.P. KUBO**

**JUDGE**