

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA

Divorce Cause 55 of 2005

V.P.VPETITIONER

VERSUS

T.VRESPONDENT

J U D G M E N T

On the 11th day of November 2000, V.P.V and T.V being the Petitioner and Respondent herein respectively, got married at Nairobi. In a petition dated 1st August 2005, the subject matter of this judgment, V.P.V sought for the aforesaid marriage to be dissolved on the grounds that T.V deserted the matrimonial home and further that the marriage has irretrievably broken down.

On her part, the Respondent opposed the petition by filing an answer to the petition and a cross-petition for the dissolution of the marriage on grounds of desertion and cruelty on the part of the Petitioner.

When the divorce cause came up for hearing the Respondent was granted leave to withdraw the cross-petition. She did not oppose the petition when called upon to tender evidence against the petition for divorce.

The Petitioner gave evidence without calling any independent witness in support of his petition. He told this court that he got married to the Respondent on the 11th day of November 2000 in a marriage ceremony solemnized in Nairobi. He produced a marriage certificate the couple was issued with as evidence of the marriage contract. He told this court that he cohabited with the Respondent in their matrimonial home at staff quarters of - Hospital [PARTICULARS WITHHELD] where the Petitioner worked as a Physician until the year 2001 when the couple moved to live in Mombasa. The Petitioner claimed that serious disagreements between him and the Respondent developed over various issues immediately after the celebration of the marriage. He said the rift was so wide that the Respondent left the matrimonial home in a huff on the 22nd day of January 2002 and has since then failed to return. The Petitioner was beseeched this court to grant him the order dissolving the marriage on the basis of desertion.

Mr. Mohamood Sevany, advocate for the Petitioner, while making his final submissions over the matter urged this court to issue the order for divorce on the basis that the Petitioner has established the ground for desertion. Mr. Bowry, advocate for the Respondent did not cross-examine the Petitioner and neither did the learned advocate offer any submissions.

I have considered the evidence tendered by the petitioner in support of the petition. I have also taken into account the submissions made by the Petitioner's advocate. The main issue left for this court to determine is whether or not desertion was proved and if so whether the petitioner is entitled to the prayer for divorce. By dint of section 10 of the Matrimonial Causes Act, it is the duty of the court to inquire into the facts alleged and if satisfied on the evidence that the Petitioner's case has been proved it shall pronounce a decree for divorce. After a careful consideration of the evidence and the submissions, I am satisfied that the petitioner has proved that the Respondent deserted the matrimonial home for a period of more than 3 years without a lawful cause. There is no evidence to show that the Petitioner is guilty of constructive desertion. Consequently he is entitled to the orders sought in the petition.

In the final analysis, the marriage, the subject matter of this dispute is hereby dissolved. *Decree nisi* to issue shall be made absolute after the statutory period. Each party shall meet his or her own costs in this petition.

Dated and delivered at Mombasa this 19th day of May 2006.

J.K. SERGON

J U D G E

In open court in the presence of Mr. Mabeya h/b for Bowry for the Respondent and Mrs. Kipsang h/b for Savany for the Petitioner.