

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA

Divorce Cause 47 of 2003

G. Z. B.PETITIONER

VERSUS

V. P.RESPONDENT

J U D G M E N T

On the 23rd day of August 1997, G. Z. B. and V. P. being the Petitioner and the Respondent respectively herein, had their marriage solemnized at Mombasa pursuant to the Marriage Act. This is the marriage the petitioner now seeks to have dissolved in the petition dated 31st July 2003, the subject matter of this judgment.

When the petition came up for hearing the petitioner testified without calling for the evidence any other witnesses. G. Z. B. produced before this court a copy of the marriage certificate to establish that their marriage with the Respondent was solemnized in Mombasa on 23rd august 1997. She told this court that the couple lived and cohabited as husband and wife within Mombasa upon exchanging the marriage vows. She said that the Respondent deserted the matrimonial home in the month of May 1998 and has since then not come back. She said their marriage was blessed with one issue named [*particulars withheld pursuant to section 76 of the Childrens Act no. 8 of 2001*] who is in her custody.

On this ground the petitioner prayed for the marriage to be dissolved. She also prayed for the custody of the child to be given to her. The Respondent did not file an answer to the petition. The Respondent did not also offer any evidence to counter the Petitioner's petition.

Mr. Omwenga advocate for the Respondent did not cross-examine the petitioner during the hearing of this cause.

The petition is largely unopposed. I have observed the petitioner as she testified. She appeared to me to be a straightforward witness hence I have no reason to doubt the veracity of her evidence. Consequently, I am convinced that the Respondent deserted the matrimonial home as from May 1998. This is a good ground which can lead to the dissolution of the marriage. Since there is no evidence to the contrary, I find the ground to be well established.

The petitioner has also prayed for the custody of the child. She has shown that [*facts withheld pursuant to section 76 of the Childrens Act no. 8 of 2001*] is aged about 8 years. He is therefore a child of tender age. Custody of such persons shall be given to the mother because it would be to the best interest of the minor. It is not denied that the petitioner has the custody of the minor.

In the final analysis, the marriage between G. Z. B. and V. P. is dissolved. A decree nisi to issue and the same to be made absolute after 3 months from the date hereof. The custody of the child, [*facts withheld pursuant to section 76 of the Childrens Act no. 8 of 2001*] to be given to the petitioner.

Each party to meet his or her own costs.

Dated and delivered at Mombasa this 30th day of June 2006.

J.K. SERGON

J U D G E

In open court in the absence of the parties.-