



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

Divorce Cause 19 of 2006

M.R.J.MPETITIONER

VERSUS

N.A.P.....RESPONDENT

J U D G M E N T

M. R. J.M the Petitioner herein sought to have the marriage between him and N. A. P. the Respondent herein solemnized on 28th day of February 1999 to be dissolved. The petition is verified by an affidavit sworn by the petitioner. The Petition was served but unfortunately the Respondent did not file a response to it. The petition therefore proceeded for hearing exparte.

Pursuant to rule 25(I)(i) and (ii) of the Matrimonial Causes Rules, this court permitted the Petitioner to rely on affidavit evidence to prove his petition.

I have perused the grounds set out in the petition and the facts deponed in the verifying affidavit. I have also taken into account the oral and documentary evidence tendered by the Petitioner. I have further considered the brief submissions of Mr. Suchak advocate for the Petitioner.

The Petitioner testified alone without calling for the evidence of independent witnesses. He produced the marriage certificate to show that his marriage with the Respondent was solemnized at a Shia Muslim Mosque in London on the 28th day of February 1999 pursuant to the Marriage Act of 1949. After their marriage, the petitioner said they cohabited with the Respondent in England and lastly in a residential building in Mombasa, Kenya.

The Petitioner stated that the Respondent, a British Citizen left for London and that she has verbally and by writing indicated that she has no intention of coming back to Kenya to cohabit with him. The Petitioner said that sometimes in the month of January 2001, the Respondent told him that she was lost affection for him and hence she was disillusioned with the marriage. He said the Respondent told him that she regretted having made a great mistake by marrying him. On the 17th day of September 2002 she left for the United Kingdom. The Petitioner further claimed that the Respondent denied him conjugal rights. He said this has caused him mental anguish and stress. He said this has disturbed him thus making him lose concentration in his place of work as a Sales Director. The Petitioner further claimed that the Respondent has on various occasions refused to even accompany him to attend Social and Religious functions. He said the parents on both sides have attempted to salvage the marriage but it appeared they are incompatible. He said the Respondent visited him in the month of January 2006 but she denied him conjugal rights. He produced two letters the Respondent sent by E-Mail upon her return to London

indicating that the marriage was unworkable.

Upon receiving the evidence, Mr. Suchak advocate for the Petitioner urged this court to order the marriage dissolved because the Petitioner had established that the Respondent had willfully deserted the petitioner and that she has denied the petitioner conjugal rights.

I am satisfied that the petitioner is domiciled in Kenya. I also believe his evidence that he is a Kenyan citizen. Therefore though the marriage was solemnized in the United Kingdom, the marriage may be dissolved by this court pursuant to the provisions of section 4 of the Matrimonial Causes Act.

I have carefully analyzed the evidence tendered. What is clear is that the parties to the marriage are living apart. The Respondent lives in the United Kingdom whereas the Petitioner is domiciled in Kenya. The marriage certificate produced in court shows that at the time of the marriage, both the Respondent and the Petitioner lived in the United Kingdom. It is not clear how the Petitioner left U.K. for Kenya thus leaving the Respondent in U.K. I am not convinced that the Respondent is guilty of desertion. In the absence of any evidence to the contrary, I am prepared to infer actual and constructive desertion on the part of the petitioner. I am not also convinced that the Respondent has denied the Petitioner conjugal rights. The evidence tendered by the Petitioner shows that the Respondent has had sexual intercourse with him intermittently.

There is strong evidence that the marriage is not working as anticipated. It is also clear from the correspondences produced in evidence that the parties are incompatible. The sum total is that the marriage has irretrievably broken down. The Respondent and the Petitioner with their parents appear to have tried to salvage the marriage but unfortunately things seem not to work. On that ground alone I will and hereby do order the marriage to be dissolved. A decree nisi be issued but the same to be made absolute within the statutory period.

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

J. K. SERGON

J U D G E