



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI (NAIROBI LAW COURTS)**  
**Divorce Cause 13 of 2005**

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

**VERSUS**

**M.C.....** **RESPONDENT**

**JUDGMENT**

On 01.02.05 the petitioner filed petition praying for the following orders:-

- a) That the marriage between the petitioner and respondent be dissolved.
- b) That the respondent be condemned to pay the costs of this cause.

The court record shows that the respondent was served with court process in this matter by substituted service, i.e. by TNT International Express in Nairobi through which Notice to Appear was sent to the respondent on 18.11.05 at her last known address, namely:-[PARTICULARS WITHHELD]

The notice required the respondent to enter appearance within 8 days of service. An affidavit of service by Ben Makasi Simiyu, Advocate for the petitioner sworn on 13.12.05 deposes that as at that date the documents addressed to the respondent had not been returned unclaimed and that, therefore, the same must have been received by the respondent. The court record shows that the respondent never entered appearance or filed answer to petition. This cause, therefore, proceeded as an undefended cause.

The cause came up for hearing before me on 06.07.06 whereat the petitioner was represented by learned counsel, Mr B.M. Simiyu. Only the petitioner testified in this cause.

The petitioner's case may be summarized as follows. He is now a Kenyan citizen by naturalization and has lived in Kenya since 1991. Before that the petitioner was British. He and the respondent got married at the Laikipia District Commissioner's office, Nanyuki on 12.02.92 under the Marriage Act (Cap. 150).

After marriage the petitioner and respondent cohabited in Nanyuki between 1992 – 1996 and in Nairobi between 1996 – 2000. There are two issues of the marriage: -

- a) W.S.E, a daughter born on 07.03.93.
- b) K.A.C also a daughter born on 06.03.95.

It was the petitioner's evidence that on 19.09.2000 the respondent deserted him and the matrimonial

home, went back to her home country i.e. St Lucia in the West Indies and has never returned. The petitioner told the court that the respondent and himself did not disagree over anything in particular but that the respondent left the matrimonial home after general breakdown in communication between her and himself. He said the respondent displayed general lack of trust in him and that she had been away for 4 years as at the time of filing of the present divorce proceedings. The petitioner said he takes care of the children's upkeep. The first child, W.S.E lives with him now while the second child, K.A.C lives with the respondent. Howsoever, even the second child is expected to come and also live with the petitioner from September, 2006. There is no dispute, he said, over custody of the children of the marriage. The petitioner reiterated prayer (a) for dissolution of his marriage to the respondent on the ground of desertion but abandoned prayer (b) for costs of the petition.

I have given due consideration to the petitioner's case. His evidence stands uncontroverted.

Section 8 (1) (b) of the Matrimonial Causes Act (Cap. 152) provides 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 respondent is reported to have deserted the petitioner and the matrimonial home on 19.09.2000 and never returned. The present petition was filed on 01.02.05, i.e. over 3 years had elapsed between the respondent's desertion and the filing of the petition. No explanation has been availed to court by the respondent for her departure from the matrimonial home.

I hold that the ingredients of the matrimonial offence of desertion have been proved and I find the respondent guilty thereof. Accordingly, I hereby pronounce a decree of divorce and order that the marriage between the petitioner and respondent be and is hereby dissolved. *Decree nisi* shall issue forthwith, the same to be made absolute after expiry of the statutory period of 3 (three) months upon application therefor. I make no order as to costs.

Orders accordingly.

**Delivered at Nairobi this 24<sup>th</sup> day of July, 2006.**

B.P. KUBO

JUDGE