

**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)**

Divorce Cause 68 of 2004

J. K. M.....PETITIONER

VERSUS

N. M. Z. K.....RESPONDENT

JUDGMENT

On 14.05.03 the petitioner filed her initial petition, which she subsequently replaced with an amended petition filed on 26.06.03 praying for the following orders:-

- a) Dissolution of the marriage.
- b) Costs of the proceedings to be borne by the respondent.

The cause came up for hearing before this court on 15.06.06 whereas the petitioner was represented by learned counsel, Miss S.K. Muendo. There was no appearance for the respondent.

An affidavit of service by Simon Soi King'oo, Advocate deposes that on 03.12.03 he served the respondent with the amended petition filed on 26.06.03 and that the respondent failed to enter appearance or file answer to the petition. The cause proceeded to hearing as an undefended cause.

Only the petitioner testified in this case. The petitioner's case may be summarized as per ensuing paragraphs.

The petitioner and respondent got married on 05.01.85 at a Catholic Church in Meru under the African Christian Marriage and Divorce Act (Cap. 151). After the marriage the petitioner and respondent cohabited as wife and husband, respectively in Meru. The marriage was not blessed with any issues.

The petitioner told this court that at the time of her marriage to the respondent, she (petitioner) already had a child a boy, with another man and that the respondent accepted the child. However, after two months the respondent said he did not want the boy and that the petitioner should take the boy to his father. The petitioner did not comply with the respondent's instructions. After the petitioner failed to take the boy to his father, the respondent started sleeping out and leaving the petitioner and her child without food. Sometimes the respondent would come home and chase the petitioner and the boy away. On such occasions the petitioner would proceed to her mother-in-law's home, accompanied by the boy, and next day the mother-in-law would take the petitioner and her child back to the respondent's house but the respondent would lock all of them out.

The petitioner left the matrimonial home in August, 1986 and went to her mother-in-law who escorted her and the boy to the petitioner's parents' home. A meeting to reconcile the petitioner and respondent was convened next day but no reconciliation was reached. Petitioner said the respondent told his mother that if she wanted to keep the petitioner, she could do so but in her (mother-in-law's) house not in the respondent's house. The petitioner has lived out of the matrimonial home since August, 1986 – some 20 years now. The petitioner relies on the ground of desertion in seeking dissolution of her marriage to the respondent. According to the petitioner, the marriage has irretrievably broken down and she sees no possibility of reconciliation. The petitioner told this court that she would very much like to live with the respondent but the respondent has shown no interest in living with her. Petitioner reiterated the prayers in

her amended petition.

I am satisfied on the evidence laid before court that the marriage between the petitioner and respondent has irretrievably broken down and that the respondent forced the petitioner out of the matrimonial home. I find the respondent guilty of the matrimonial offence of constructive desertion and that such desertion occurred in August, 1986 – some 20 years ago. The cause of friction seems to be the petitioner's failure to take the boy she got with another man back to his father. On the other hand the petitioner testified before this court that the respondent initially accepted the boy but apparently changed his mind later. I find the respondent's constructive desertion of the petitioner to be without just cause and that the petitioner is entitled to the orders sought. 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 upon expiry of the statutory period of 3 (three) months upon application therefor. I also grant the petitioner the costs of these divorce proceedings.

Orders accordingly.

Delivered at Nairobi this 13th day of July, 2006.

B.P. KUBO

JUDGE