



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

**Divorce Cause 142 iof 2005**

**N.J.M..... PETITIONER**

**VERSUS**

**MN.M..... RESPONDENT**

**JUDGMENT**

On 11.11.05 the petitioner filed petition praying for the following orders:-

1. That the marriage between the petitioner and respondent be dissolved.
2. That the petitioner have custody and control of the child N.N.M

Hearing of the petition came up on 22.06.06 whereat the petitioner was represented by learned counsel, Mr V. Goswami. There was no appearance for the respondent.

Petitioner's counsel informed this court that the respondent was served but did not enter appearance or file answer to the petition. There is in the file an affidavit of service sworn by petitioner's counsel, Virinder Nath Goswami on 16.01.05 that he served the respondent on 06.12.05. There is no memorandum of appearance or answer to petition in the court file. The cause proceeded as an undefended cause.

Only the petitioner testified before this court and his case may be summarized as per ensuing paragraphs.

The petitioner and respondent got married on 22.11.95 at the Shree Hindu Temple, Moshi, Tanzania according to the rites and ceremonies of Hindu religion. A certificate of marriage exhibited before court shows that the marriage was contracted under The Law of Marriage Act, 1971 of Tanzania. After the marriage the spouses cohabited or went to live with the petitioner's parents at their family house in Nairobi. There is one child of the marriage, a son called N.N.M born on 23.07.99.

It is the evidence of the petitioner that he is domiciled in Kenya and that the respondent left the matrimonial home on 09.10.02 and took away all her personal belongings along with her but left behind the child of the marriage. It is on record that the respondent now resides with her mother in Moshi, Tanzania.

As the petitioner is domiciled in Kenya, he is subject to Kenyan law. The petitioner has based his case

on the ground of desertion. He has averred that the respondent deserted him without cause. Under Kenyan law, a spouse commits the matrimonial offence of desertion if such spouse deserts the other spouse without cause for a period of at least 3 (three) years immediately preceding the presentation of the petition. In the present case, the petition was filed on 11.11.05. The petitioner's evidence, which has not been controverted, is that the respondent deserted on 09.10.02. More than 3 years have elapsed since the desertion complained of by the petitioner.

I am satisfied on the uncontroverted evidence placed before the court that the respondent has indeed deserted the petitioner 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 after expiry of the statutory period of three (3) months upon application therefor. I grant the petitioner custody of the child of the marriage, N.N.M, now aged around six (6) years.

Orders accordingly.

**Delivered at Nairobi this 13<sup>th</sup> day of July, 2006.**

**B.P. KUBO**

JUDGE