



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

Divorce Cause 70 of 2005

H.F.Z.....PETITIONER

VERSUS

S.N.Z..... RESPONDENT

JUDGMENT

On 30.05.05 the petitioner filed petition whose central theme or prayer is that:-

The marriage between the petitioner and respondent be dissolved and a divorce granted.

The petitioner was represented in these divorce proceedings by learned counsel, Mr T.O. Nyakeno. Hearing took place before me on 09.11.06 whereat Mr Nyakeno appeared for the petitioner but there was no appearance for the respondent.

The following emerges from the pleadings and evidence in support thereof.

The petitioner and respondent got married to each other on 25.09.92 at the Office of the Registrar of Marriages, Sheria House, Nairobi under the Marriage Act, Cap.150 Laws of Kenya

reafter they established a home at [particulars withheld] in Nairobi. There is one issue of the marriage, a boy named A. M. Z. born on 04.05.90 and now aged around 16 years.

It is the petitioner's case that the respondent left and/or deserted him (petitioner) and the matrimonial home on 15.09.96 merely saying she had decided to leave him and has never resumed cohabitation with the petitioner ever since and lives in [particulars withheld] separately from the petitioner. The petitioner adds that from the date of desertion aforesaid, the respondent has failed to provide the petitioner with necessary love, support and conjugal rights, hence the prayer for dissolution of the marriage.

It is the petitioner's further evidence that since the respondent deserted the matrimonial home, he (petitioner) and respondent have had joint custody of the child of the marriage but that the petitioner has been meeting the child's school fees and maintenance expenses.

The petitioner is a German and a tour operator by profession. He lives in Nairobi. The respondent is a Kenyan and businesswoman.

The court record shows that one Francis Gachigi Nyingi, process server duly served upon the respondent on 17.06.05 a notice to appear plus the petition herein and that the respondent acknowledged service. There is no evidence that the respondent entered appearance or answer to petition. This matter, therefore, proceeded as an undefended cause. According to the petitioner, the marriage between him and respondent has irrefutably broken down.

I have given due consideration to the pleadings herein and the evidence in support thereof.

As the respondent neither filed answer to the petition nor appeared to give evidence, the petitioner's evidence remains unchallenged and I accept it as reflecting the correct state of affairs with regard to the failed marriage between the petitioner and respondent. Section 8 of the Matrimonial Causes Act, Cap.152 Laws of Kenya provides, *inter alia*, 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 ingredients of desertion have been fully met in this case and I find the respondent guilty of the matrimonial offence of desertion. Accordingly, I 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.

Orders accordingly.

Delivered at Nairobi this 30th Day of November, 2006.

B.P. KUBO

JUDGE