

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
DIVORCE CAUSE NO. 55B OF 2001

JKL.....PETITIONER

Versus

NBL.....RESPONDENT

RULING

The applicant, by way of Notice of Motion dated 11th November 2004 sought for an order seeking for the Review of part of the decree issued on 27th January, in particular the dismissal of the prayer for dissolution of the marriage between the applicant and respondent and to replace the said prayer with an order for dissolution of the marriage. The application is premised on the following grounds:

- (a) That the respondent abandoned and deserted the applicant and the issue of the marriage for a period of 7 years. The respondent left Kenya in 1995 and has never come back.
- (b) That in the year 2000, the respondent, without the consent and knowledge of the applicant, continued to abandon and desert the applicant and the issue of the marriage who has moved from Australia to the Republic of Botswana where he has set up a business.

Counsel for the applicant argued that there is sufficient reason to support the review of the order dismissing the prayer for dissolution of marriage while invoking the inherent powers vested in this court by virtue of section 3 of the Matrimonial Causes Act and Under order 44 of the Civil Procedure Rules.

The application is supported by the applicant's affidavit which has detailed the continued desertion by the respondent. The applicant has continued to suffer tremendous mental agony due to the abandonment. The respondent has never defended this cause and according to the correspondence he sent to the applicant, he keeps wondering why the divorce cause has never gone through as he only keeps receiving Notices from the applicant's advocates. Since the respondent has been separated for over 7 years from the applicant and the child, the marriage is irretrievably broken down and the continued hope for reunion and reconciliation has no chance since the respondent has settled in Botswana.

I have given due consideration to the material that was placed before me especially the provisions of order 44 of the Civil Procedure Rules and the provisions of the Matrimonial Causes Act. Although the provisions of order 44 are not particularly imported in the M.C.A., I am of the humble view that in exercise of the inherent jurisdiction in the interest of justice and prevent undue suffering of the applicant, this application can be entertained. I have also taken note of the provision of order 44(4) of the Civil Procedure Rule, Hon. Justice Khamoni who issued the decree is no longer attached to this court at the time when this application was made. I am satisfied that there is sufficient cause to review the order dismissing the prayer for dissolution of the marriage for reasons, that the respondent has continued to abandon the applicant and has not returned to this country since 1995. Lastly the respondent has not made any application or defended the cause.

Accordingly the decree made on 17th January 2003 is hereby reviewed in regard to prayer (a) and replaced with an order allowing the dissolution of the marriage and the decree nisi to issue for a period of 3 three months.

It is so ordered.

Ruling read and signed on 28th January 2005.

MARTHA KOOME

JUDGE