



REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI MILMANI LAW COURT

DIVORCE CAUSE 152 OF 2003

**B W M ..... PETITIONER**

**AND**

**B M K ..... RESPONDENT**

**J U D G M E N T**

This divorce cause was commenced by B W M (hereinafter called “the Petitioner”) when she on 15th October, 2003 filed the petition suit of even date against B M K (hereinafter called “the Respondent”) for dissolution of their marriage solemnized on 10th May, 1969.

The Petitioner’s marriage to the Respondent was conducted at District Commissioner’s Office Nairobi under the provisions of the Marriage Act (Cap 150). A certificate of marriage serial number 1066 was consequently thereto issued by the presiding Registrar of Marriage. Subsequently, the Petitioner and the Respondent commenced cohabitation as man and wife, and finally established their matrimonial home in Buruburu Estate Phase IV Nairobi. The said union of the Petitioner and the Respondent was blessed with one issue of marriage namely; R W M born on 4th January, 1969 when the parties herein were already married under the applicable customary law.

The Petitioner seeks for dissolution of the said marriage to the Respondent on ground of cruelty, adultery and presumed desertion as particularized in paragraphs 3 and 4 of the said Petition. Upon being served with a copy of the Petition and Notice to Appear on 8th November, 2003, the Respondent failed to Enter Appearance or to file an Answer within the requisite period. When the Petition came for hearing on 3rd March, 2005 there was no appearance for the Respondent. The hearing therefore proceeded by way of an undefended cause, in accordance with the issued Registrar’s Certificate. I have carefully considered the testimony of the Petitioner. I have scrutinized and inquired into the alleged ground of divorce as contained in the petition suit. The Petitioner has testified that following the issuance of Separation Orders in her favour on 10th August, 1987 under Resident Magistrate’s Court at Nairobi (Sheria House) Maintenance Cause No. 24 of 1987 under which orders the Respondent was inter alia prohibited from cohabiting with the Petitioner, the Petitioner and the Respondent have never lived together as man and wife. The said Respondent has, according to the testimony of the Petitioner never attempted to seek reconciliation notwithstanding the said Separation Orders, and the Petitioner has all these many years lived alone and rightly considers herself as a deserted wife entitled to divorce as prayed.

I am satisfied that the Respondent has without cause deserted the Petitioner for a period of more than three years prior to the presentation of this Petition and also by reason of circumstances described in paragraph 4 of the said petition. I am satisfied that the Petitioner has not in any manner whatsoever contributed to the said desertion, particularly because the said Respondent failed to seek reconciliation following the said Separation Orders. The only reasonable inference that can be made from the conduct of the Respondent is that the Respondent has deserted the Petitioner as he was duty bound to move the court for the discharge or variation of the aforesaid Separation Orders.

I am therefore satisfied that the major elements that must be present before desertion can be proved that is, the de facto separation of spouse, the animus deserendi, the absence of consent on the part of the deserted spouse and the absence of any reasonable cause for withdrawing from cohabitation on the part of the deserting spouse have conclusively been established. I am thus satisfied that after the said uninterrupted duration of separation of well over fifteen years initially de-jure, the said marriage of the Petitioner to the Respondent has irretrievably broken down on ground of desertion by the Respondent as

particularly more pleaded in the said Petition. The Petitioner was not able to produce any evidence to sustain the other pleaded grounds for divorce, and I thus make no findings pursuant thereto.

I am satisfied that there has not been any connivance or condonation on the part of the Petitioner and further that no collusion exists between the Petitioner and the Respondent. Lastly, I am satisfied that the Petition has not been presented or prosecuted in collusion with the Respondent and further that by reason of the anticipated reconciliation at the behest of the Respondent, there has not been unreasonable delay in presenting or prosecuting the Petition.

I am satisfied on the basis of the evidence adduced that the case for the Petitioner has been proved beyond reasonable doubts. I hereby therefore pronounce a decree of divorce and order that the marriage between the Petitioner and the Respondent be and is hereby dissolved. A decree nisi shall henceforth issue, the same to be made absolute upon application. I make no orders as to custody and maintenance of the child of marriage because the said child is now sui juris.

I further make no orders as to costs.

It is so ordered.

**DATED, DELIVERED AND SIGNED at Nairobi this 7th day of April, 2005.**

**P.J. KAMAU**

**JUDGE.**