



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**H.C. DIVORCE CAUSE NO. 15 OF 2003**

**T E A O ..... PETITIONER**

**AND**

**W G M..... RESPONDENT**

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

On 31st January, 2003 Theodore Epey Ayuk Oben filed this Petition against W G M for dissolution of their marriage solemnized on 21st July, 1998. The said petition was dated 30th January, 2003.

The Petitioner's marriage to the Respondent was conducted at Office of the Registrar of Marriages Nairobi under the provisions of the Marriage Act (Cap 150). A certificate of marriage number 691/98 (Serial No. 77197) 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 the up-market Runda Estate in Nairobi. The said union of the Petitioner and the Respondent was blessed with one issue of marriage namely; B.A.O. who was born on 13th September, 1996 during the period when the parties herein were cohabiting as man and wife under the customary law.

The Petitioner seeks for dissolution of the said marriage to the Respondent on ground of desertion as particularized in paragraph 8 of the said petition. Upon being served with a copy of the Petition and Notice to Appear on 8th February, 2003, the Respondent failed to enter Appearance of to file and Answer within the requisite period. When the Petition came for hearing on 21st April, 2005 there was no appearance for the Respondent. The hearing therefore proceeded by way of an undefended cause in terms of the Registrar's Certificate issued on 28th October, 2004.

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 Respondent is said to have deserted the matrimonial home sometime in August, 1999 without any provocation whatsoever and never to return again. According to the testimony of the Petitioner, the said Respondent was incapable of reconciling her marriage life with the dictates of the extended customary family of the Petitioner, a citizen of Cameroon, and which family the Petitioner and the Respondent were customarily bound to care and accommodate. I am satisfied that the Respondent has to the detriment of the Petitioner therefore without reasonable 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 8 of the said Petition. I am satisfied that the Petitioner has not in any manner whatsoever contributed to the said desertion. I am further satisfied that the Petitioner has made valiant efforts at reconciliatory without success, and that all such efforts have been thwarted by the Respondent.

I am also 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 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.

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 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 doubt. 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. In terms of the joint consent letter dated 7th March, 2005 and filed in court on 9th March, 2005, as regards maintenance, custody and access of the issue of marriage, and also costs, I make and record the following orders:-

- 1. Maintenance payable to the Respondent be and is hereby agreed at Kshs.4,562,500.00**
- 2. The agreed maintenance of Kshs.4,562,500.00 is hereby marked as settled in full.**
- 3. The Petitioner and Respondent be and are hereby granted joint custody of the issue of the marriage, M B A O. However, the Respondent, W G M, shall have primary custody of the issue of the Marriage, M B A O but the Petitioner, T E A O shall at all times have full and uninhibited access to his son, M B A O.**
- 4. That the Petitioner shall primarily be responsible for the education and upkeep of the issue of the marriage, M B A O.**

I grant liberty to apply. I make no orders as to costs.

It is so ordered.

**DATED, DELIVERED AND SIGNED** at Nairobi this 12th day of May, 2005.

**P.J. KAMAU**

**JUDGE.**