

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT NAIROBI (MILIMANI LAW COURTS)

DIVORCE CAUSE NO 7 OF 2001

J.W.M.....PETITIONER

VERSUS

M.M.....RESPONDENT

JUDGEMENT

On 16th January 2001 **J.W.M** filed this petition against **M.M** for dissolution of their marriage solemnized on 10th February, 1995.

The Petitioner's marriage to the Respondent was conducted at the Attorney-General's Office in Nairobi under the provisions of the Marriage Act (Cap 150). A certificate of marriage number [PARTICULARS WITHHELD] was consequently thereto issued by the presiding Registrar of Marriage. Subsequently, the Petitioner and the Respondent commenced cohabitation as man and wife, and established their matrimonial home at Riruta Satellite in Nairobi. The Petitioner and Respondent were blessed with one issue of marriage, a daughter namely **N.M** who was born on 20th October 1993.

The Petitioner seeks for dissolution of the said marriage to the Respondent on grounds of cruelty and desertion as particularized in paragraphs 9, and 11 of the said Petition. Upon being served with a copy of the Petition and Notice to Appear, the Respondent entered Appearance together with an Answer to the Petition by way of Cross Petition as prescribed by the relevant Rules. The Petitioner duly joined issues by way of a Reply. When both the Petition and the Cross Petition came for hearing on 18th December 2003 the Respondent though present and represented opted not to tender any oral evidence.

I have carefully considered the testimony of the Petitioner. I have also scrutinized and inquired into the alleged grounds of divorce as contained in the petition suit. I am satisfied that the Respondent is by reason of circumstances and events described in paragraph 11 of the said Petition guilty of the Petitioner's constructive desertion. I am thus satisfied that the said marriage of the Petitioner to the Respondent has irretrievably broken down on ground of constructive desertion provoked by the Respondent against the Petitioner 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 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. By reasons of prior consent orders on custody of the child of marriage, there will be no orders as to custody. I make no orders as to costs save as otherwise made elsewhere.

It is so ordered.

DATED and DELIVERED at Nairobi this 29th day of January 2004.

P. J. KAMAU

AG. JUDGE