

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL CASE NO.28 OF 2003

DAVID MWANGI PLAINTIFF

VERSUS

WANJIKU MUNENE DEFENDANT

JUDGMENT

By plaint dated 31.01.03 the Plaintiff herein, DAVID MWANGI, seeks the following main reliefs:-

- (a) a declaration that the Plaintiff and the defendant be presumed to have been married at all material times;***
- (b) an order of dissolution of the presumed marriage; and***
- (c) that permanent custody of the children of the presumed marriage be awarded to the Plaintiff.***

The facts giving rise to the presumed marriage are set out in paragraphs 3 and 4 of the plaint. Dissolution of the marriage is sought upon the ground of desertion as more particularly set out in paragraphs 6, 7, 8 and 9 of the plaint. It is also pleaded that the presumed marriage has irretrievably broken down.

The Defendant entered appearance and filed a statement of defence. In it, she admitted the facts giving rise to the presumed marriage, including the two children of the marriage. But she denied all the allegations of desertion against her. She alleged cruelty on the part of the Plaintiff, which he denied in his reply to defence.

It turns out that the issue of custody of the children was settled in previous proceedings between the parties. Other issues relating to matrimonial property were also settled in those previous proceedings.

The settlement was upon the basis that there existed a marriage between the parties.

At the hearing of this matter there was no appearance for the Defendant. Her advocates had been duly served with hearing notice. The Plaintiff therefore proceeded ex parte. He alone testified. I am satisfied from his uncontroverted testimony that he and the Defendant cohabited, bore children and acquired properties together in circumstances that raise a presumption that they were husband and wife. Without any evidence to the contrary that presumption has not been rebutted. I am also satisfied upon the Plaintiff's testimony that in October, 1999 the Defendant deserted the matrimonial home and moved to England where she now lives. This was without the Plaintiff's consent and without reasonable justification. From the material placed before the court I am satisfied that the relationship between the parties has irretrievably broken down and that there is no possibility of them getting back together.

In the event I hereby declare that there exists a presumed marriage between the Plaintiff and the Defendant. I will further order that the said presumed marriage be and is hereby dissolved. There will thus be judgment for the Plaintiff as sought in prayers (a) and (b) of the plaint. There will be no order as to the costs of these proceedings. It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 13TH

DAY OF FEBRUARY, 2004.

H.P.G. WAWERU

JUDGE