

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

DIVORCE CAUSE NO 211 OF 2000

SAMUEL KIPTOO CHEPTARUS.....PETITIONER
VERSUS

MONICA AKOTH KISWAYA.....RESPONDENT

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JUDGEMENT

On 9th November 2000 Samuel Kiptoo Cheptarus who is a Kenyan citizen filed this petition against Monica Akoth Kiswaya for dissolution of their marriage solemnized on 1st July 1994. At the time of presentation of the said petition, the Petitioner was domiciled in Kenya.

The Petitioner's marriage to the Respondent was conducted at the District Commissioner's Office Eldoret, Uasin-Gishu under the provisions of the Marriage Act (Cap 150). A certificate of marriage number 151/94 was consequent thereto issued by the presiding Marriage Officer. Subsequently, the Petitioner and the respondent commenced cohabitation as man and wife, and established their matrimonial home in Langas Estate Eldoret. There were no children to the said union.

The Petitioner seeks for dissolution of the said marriage to the Respondent on ground of adultery as particularized in paragraph 6 of the said Petition. Upon being served with a copy of the Petition and Notice to Appear, the Respondent failed to enter appearance or to file an Answer within the requisite period. When the Petition came for hearing on 11th March 2004 there was no appearance for the respondent. The hearing therefore proceeded by way of an undefended cause.

I have carefully considered the testimony of the Petitioner. I have also scrutinized and inquired into the alleged ground of divorce as contained in the petition suit. I am unable to make a finding on the said ground of divorce for scarcity of evidence. I am however satisfied that the Respondent has without cause constructively 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 6 of the Petition. I find the Respondent in constructive desertion having literally thrown the Petitioner out of the aforesaid matrimonial home on the said 26th day of October 1996. The Petitioner has satisfied this court that he has not in any manner whatsoever contributed to the said desertion. I am thus satisfied that the said marriage of the Petitioner to the Respondent has the Respondent having declined to engage in any form of reconciliation discussion irretrievably broken down on ground of constructive 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 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 on expiry of three(3) months. The Petitioner having

abandoned the prayer for costs there will be no orders as to costs.

It is so ordered.

DATED DELIVERED and SIGNED at Nairobi this 25th day of March 2004.

P. J. KAMAU

AG. JUDGE