



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI
DIVORCE CAUSE NO 170 OF 2003

A K T.....PETITIONER

VERSUS

M K M T.....RESPONDENT

JUDGMENT

On 4th December 2003 A K T, a Kenyan Citizen, filed this Petition against M K M T, a Lesotho citizen, for dissolution of their marriage solemnized on 22nd July 1977. 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 Central Office of Vital Statistics, Bucharest in the then Socialist Republic of Romania and duly registered in Bucharest under the 7th Ward at No 2028 in the Register of Vital Statistics on 22nd July 1977. A certificate of marriage serial No. *{Particulars Withheld}* was consequent thereto issued. Subsequently, the Petitioner and the Respondent commenced cohabitation as man and wife, and established their matrimonial homes firstly as students in the then Romania and subsequently in Nairobi and Mombasa, Kenya at different intervals. The said union between the Petitioner and the Respondent has been blessed with three issues namely: N T (born on 3rd December 1977); L T (born on 8th January 1983) and K T (born on 8th May 1989).

The Petitioner seeks for dissolution of the said marriage to the Respondent on ground of desertion 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 3rd June 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. The Respondent is said to have deserted the matrimonial home in Mombasa sometime in September 1995 having opted to establish and develop her career in her home country Lesotho and in Botswana against the wishes of the Petitioner.

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 6 of the Petition. 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 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 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 expiration of one month hereof. It is further hereby ordered by consent of parties:-

1 That the Petitioner and the Respondent are hereby awarded joint custody of K T until he attains the age of majority and that meanwhile the Respondent do have the day to day control and care of the said child;

2 That the Petitioner and the Respondent jointly be contributing to the educational expenses of L T and K T and that the Respondent be responsible for maintaining the said children; and

3 That there be liberty to apply and that each party do pay their own separate costs.

It is so ordered

DATED DELIVERED AND SIGNED at Nairobi this 17th day of June 2004.

P. J. KAMAU

AG. JUDGE