

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
DIVORCE CAUSE NO 94 OF 1996

H K K.....PETITIONER

AND

S W K.....RESPONDENT

JUDGMENT

On 12th July 1995 H K K filed this petition against S W K for dissolution of their marriage solemnized on 22nd November 1985 and which petition suit was subsequently amended and filed on 7th October 2003.

The Petitioner's marriage to the Respondent was conducted at the District Commissioner's Office, Bungoma under the provisions of the Marriage Act (Cap 150). A certificate of marriage number 18 (*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 finally established their matrimonial home in Kajiado Town. The said union of the Petitioner and the Respondent was blessed with three issues of marriage namely; A K(24yrs); D K (22yrs) and J K (20 yrs).

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 and with the amended Petition on 17th November 2003 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 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 on 6th April 1995 without any provocation whatsoever and never to return again. The Petitioner has since then been living with the said children of marriage. 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 amended Petition and also by reason of circumstances described in paragraph 6 of the said Petition. I am satisfied that the Petitioner 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 application. I make no orders as to custody and maintenance of the children of marriage as the said children are all *sui juris* . I further make no orders as to costs.

It is so ordered.

DATED and DELIVERED at Nairobi this 17th day of June, 2004.

P. J. KAMAU

AG. JUDGE