



REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA AT NAIROBI  
DIVORCE CAUSE NO 74 OF 2003

CHARLES WAITHAKA CHEGE.....PETITIONER

VERSUS

LUCY WAMBUI.....RESPONDENT

J U D G M E N T

On March 2003 Charles Waithaka Chege filed this Petition against Lucy Wambui for dissolution of their marriage solemnized on 30th August 1986.

The Petitioner's marriage to the Respondent was conducted at ACK Emmanuel Church Kibiciku under the provisions of the Marriage Act (Cap 150). A certificate of marriage number 609067 (serial No. 042101) 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 Rongai, Nakuru. The said union of the Petitioner and the Respondent was blessed with four issues of marriage namely; Lydia Wanja (born in 1973).

Caroline Wambui (born in 1975) John Mbugua (born in 1979) and David Chege (born in 1987) Prior to the aforesaid solemnisation, the Petitioner and the Respondent and cohabited together since 1972.

The Petitioner seeks for dissolution of the said marriage to the Respondent on ground of desertion as particularized in paragraph 7 of the said petition. Upon being served with a copy of the Petition and Notice to Appear on 26th June 2003 the Respondent failed to enter Appearance or to file an answer within the requisite period. When the Petition came for hearing on 24th 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 sometime in 1992 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 Petition and also by reason of circumstances described in paragraph 7 of the said Petition. I am satisfied that the Petitioner has not in any manner whatsoever contributed to the said desertion.

I am also satisfied that the major elements that must be present before desertion can be proved that is, the *de facto* separation of spouse, the *animus deserendi*, the absence of consent on the part of the deserted spouse and the absence of any reasonable cause for withdrawing from cohabitation on the part of the deserting spouse have conclusively been established. 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 above the statutory age limit. I further make no orders as to costs. It is so ordered.

DATED DELIVERED AND SIGNED at Nairobi this 15th day of July, 2004.

**P. J. KAMAU**

**AG JUDGE**