



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

DIVORCE CAUSE NO 68 OF 2004

J. BETTY KAMENDE KITIVO.....PETITIONER

VERSUS

MAURICE NDAMBUKI KITIVO.....RESPONDENT

J U D G M E N T

On 21st May 2004 J. Betty Kamende Kitivo filed this Petition against Maurice Ndambuki Kitivo for dissolution of their marriage solemnized on 2nd April 1977.

The Petitioner's marriage to the Respondent was conducted at Machakos Deliverance Church under the provisions of the African Christian Marriage and Divorce Act (Cap 151). A certificate of marriage number serial No. 357572 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 at Ngara Estate in Nairobi. There are no issues to the said marriage.

The Petitioner seeks for dissolution of the said marriage to the Respondent on ground of desertion as particularized in paragraph 8 of the said petition. Upon being served with a copy of the Petition and Notice to Appear on 24th May 2004 the Respondent failed to enter Appearance or to file an answer within the requisite period. When the Petition came for hearing on 1st July 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 August 1993 without any provocation whatsoever and never to return again. The Respondent is according to the testimony of the Petitioner, said to have deserted the matrimonial home because the marriage was not blessed with children. I am thus 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 8 of the said Petition.

I am satisfied that the Petitioner has not in any manner whatsoever contributed to the said desertion, and that the Respondent thwarted all efforts made at reconciliation by the Petitioner. 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 prosecution 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 upon application. I make no orders as to costs. It is so ordered.

DATED DELIVERED AND SIGNED at Nairobi this 8th day of July, 2004.

P. J. KAMAU

AG JUDGE