

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
DIVORCE CAUSE NO. 5 OF 1999

J K.....PETITIONER

V E R S U S

J W K.....RESPONDENT

JUDGMENT OF COURT

The Petitioner is a German National who joined in marriage with the Respondent, a Kenya National, on 26.11.1987 at Nairobi. They consummated their marriage in a hotel in Nairobi. After two days, the Petitioner left for Germany. Every year he came back to rejoin his wife in Kenya. This went on until May 1992 when he learnt that she was pregnant with his child. Respondent convinced him that the pregnancy was his. He returned to Kenya in September, 1992 to check on his wife who apparently had gotten her child in July 1992. She refused to let him join her. She refused to cohabit with him.

Meanwhile he got information that the child was a typical African child. This to him meant that she had committed adultery with an African male. Thereafter she never again rejoined him. She effectively deserted him. They have never cohabited again. He met her in 1993 but she refused to join him as his wife. The marriage broke down. There were no signs of recovery. He gave up. He filed this petition for divorce. There were no issues of the marriage except the child who was sired by another man. I have considered the evidence before me. I am persuaded beyond a reasonable doubt that the marriage is irretrievably broken down. The Respondent appears to have been solely responsible for the breakage. I find that the Petitioner need not continue being tied to a marriage which in reality does not exist. I accordingly see no impediments to granting a divorce which is based on the grounds of the Respondent's adultery, desertion and irretrievability of the broken marriage.

The final orders are:-

1. The divorce is hereby granted as petitioned.
2. A decree-nisi to issue forthwith.
3. No order as to costs.

Dated and delivered at Mombasa this 8th day of April, 2002.

D.A. ONYANCHA

J U D G E