



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**DIVORCE CAUSE NO. 194 OF 2001**

J K J .....PETITIONER

VERSUS

MJ ..... RESPONDENT

**J U D G E M E N T**

R K J, petitioned the court to dissolve his marriage to M J, on account of the Respondent's

***“constructive desertion for a period of more than 3 years immediately preceding the presentation of the petition ”.***

Notice of the institution of the petition was sent to the respondent, but she did not file an answer promoting the petitioner to apply for the Registrar's certificate. The same was issued on 10th July, 2002, certificate the cause as undefended.

The petitioner married the respondent on 21st March, 1981 in England. He produced the original marriage certificate as an exhibit in court.

The couple got married in England and continued to live there. They had 3 children as shown in para 5 of the petition. The petitioner recalled that from the time they had their first born child, the marriage started having both personal and family problems. Fights between the petitioner and respondent were very frequent, and this started affecting the children.

The respondent's family lived in Britain. She had 5 sisters who visited her very often and caused trouble. They gossiped about the petitioner and this made him feel sad and low. This went on for sometime until the 28.10.96, when the two decided to live apart. They went to the lawyer and signed an agreement to live apart. The agreement was produced in court as Ex.2.

The respondent decided to return to Kenya and live with members of his family. He has lived on his own now for 6 years. He has over the years made frantic efforts to get his wife to join him in Kenya, but she has refused totally. In October, last year 2001, he visited his children in England.

He found accommodation and stayed with his children for the period he was in England. He spoke to his wife on telephone but did not see her.

He confirmed in court that he has not colluded with his wife to bring this suit. He has not connived at nor condoned his wife's act of desertion. He prayed that his marriage be dissolved.

I have considered the petitioner's evidence, which evidence was not challenged. I have also considered the fact that the couple did sign a Deed of Separation and Settlement on 28.10.96 and have not resumed cohabitation to date, a period of nearly 6 years. I do not find that there was collusion in the signing of the Deed of Separation. I find that there were genuine problems in the marriage which as the petitioner testified, was affecting the children. It must have been in the interest of the children that, the couple decided to live apart.

A period of 6 years Separation is in my view, sufficient to warrant this court to dissolve the marriage between the petitioner and respondent, as the same has broken down because of the respondent's refusal to come and join her husband here in Kenya. I consider her to be in desertion.

I therefore proceed to dissolve the marriage between the petitioner and respondent, and direct the petitioner to pay his own costs occasioned by these proceedings.

Dated at Nairobi this 19th day of September, 2002.

**JOYCE ALUOCH**

**HIGH COURT JUDGE**