

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

DIVORCE CAUSE NO.1 OF 2000

G.M.M.....PETITIONER

VERSUS

S.M.M.....1ST RESPONDENT

E.W.M2ND RESPONDENT

JUDGEMENT

The Petitioner **G.M.M** filed this petition against **S.M.M** and **E.W.M** as respondents. The averments are that on 9th October, 1982 while then a spinster she lawfully married the first respondent **S.M.M** who was then a bachelor at the Attorney General's Chambers as shown by the marriage certificate which she produced as exhibit 1, that there are no issues between the parties, they cohabited at P[...] Estate in Nairobi from 1982 to 1991 Ki[...]Kibwezi as alternative home during the 2 period of 1983-1991, Mbooni location Machakos District as an alternative home during 1982-1991. The petitioner is a banker currently working with Kenya Commercial Bank Ltd. while the first Respondent is a businessman conducting business in Nairobi and the second Respondent is a housewife who resides with the first Respondent in Nairobi. It is her averments that the first respondent without any lawful cause or justification deserted the matrimonial home in August 1991 and since then he has never come to the petitioner. The first respondent was also during the said subsistence of the said marriage committed adultery with the second respondent as set out in paragraph 10 of the petition which adultery was committed in diverse places at Sunview maisonettes. That on 8th August, 1992 the first respondent called on the parents of the second respondent and performed a ceremony which is prerequisite to the formalization of the Kamba customary law marriage. It is her averments that the marriage has irretrievably broken down and the same cannot be mended and for this reason the said marriage should be dissolved, she be maintained by the first respondent and that the respondents do pay costs of the proceedings.

The petitioner and her brother gave evidence as PW1 and 2 and they reiterated the contents of the petition and stated that the first respondent deserted the matrimonial home on his own, he has never come back since 1991, he has refused and rejected moves for reconciliation, he has lost interest in the marriage which cannot be mended. He has issues with the union and he is keen on formalizing that marriage. That an order of dissolution is the only appropriate order herein.

I have evaluated the evidence on the record and perused the papers on the record and I find that the respondents were served but they filed no papers. They were served with the application for directions to which they did not respond. They were then served with the hearing notice to which they did not respond.

The petition is undefended and in terms of order 6 rule 9(1) of the Civil Procedure Rules the respondents who have notice of the proceedings and have not responded to the same are deemed in law to have accepted the allegations of the petitioner in her petition.

The petitioner has proved desertion and adultery on the part of the respondents which grounds entitle her to an order for a dissolution of the marriage in law. She only wants dissolution of the marriage and she does not want any maintenance from him. But they should pay costs.

From the foregoing the court finds that both parties have lost interest in the marriage. The marriage has irretrievably broken down and it cannot be mended. The petition is proved I enter judgement for the petitioner on the following grounds:-

1. The marriage solemnized herein between the petitioner and the first respondent on 9th October, 1982 vide certificate number 15132 solemnized at the Registrars office Nairobi be and is hereby dissolved.

2. Decree Nisi shall issue within six months from the date of the reading of this judgement or within such shorter period upon application for issuance of the same within such shorter period by the petitioner.

3. The respondents will pay costs of the proceedings.

4. There will be liberty to apply.

Dated, read and delivered at Machakos this _____ Day of
_____ 2002.

R. NAMBUYE

JUDGE