

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

DIVORCE CAUSE NO. 39 OF 2002

S.D PETITIONER

VERSUS

A.J.H.D..... RESPONDENT

J U D G E M E N T

The petitioner, **S.D**, sought an order of this court to dissolve her marriage to **A.J.H.D**, on grounds of desertion.

The petition was served on the respondent personally, and he acknowledged service, but thereafter filed no answer to the petition. The Registrar then gave a certificate certifying the pleadings to be in order, and directing the cause to proceed as an undefended cause.

In court during the hearing of the petition, the petitioner testified that she got married to the respondent on 21st March, 1992 at the Windsor Golf and Country Club. This was a marriage under the Marriage Act, Cap 150, Laws of Kenya.

Immediately upon marriage the couple lived and cohabited in Karen, then Langata, and finally, the petitioner moved into her own home in Langata, Nairobi. The couple has 2 children, Sienna Dennis, born on 18th July 1993 and O.J.D born on 15th September 1994.

The petitioner confirmed that there have been no previous proceedings between her and the respondent.

She lamented that the respondent went back to Britain in 1995 and did not return until after 3 years in 1998. She conceded that during the period he was away, he sent money for school fees for the children but not other support, financial or otherwise.

The respondent returned to Kenya in 1998, but the couple did not resume cohabitation because the Respondent had somebody else (woman) in his life.

The petitioner stated that she was forced to fend for herself as the respondent left her alone with the children. She eventually bought a house of her own and moved into it with the children leaving the matrimonial house. The respondent has not lived with them in their new residence since they moved in.

The petitioner explained the deal of settlement that she and her husband had got into concerning maintenance for herself and the children of the marriage, medical insurance and school fees. This settlement was reached by consent and I proceed to endorse it as part of this judgement. The petitioner denied having condoned or connived at the respondent's Act of desertion. She prayed for the dissolution of her marriage to the respondent.

As the respondent did not file an answer or oppose the petitioner's evidence adduced in court, I find that the petitioner's evidence is true and I believe it. From that evidence, I find that the petitioner has proved her case on a balance of probabilities, and I proceed to grant an order dissolving her marriage to the respondent.

I also award the petitioner the custody of the 2 children of the marriage with “fair access” to the respondent, as agreed in the consent order. Finally, I order the husband to pay the costs of the divorce as was agreed in the consent order, which I have adopted and is now part of the judgement herein.

The decree nisi for divorce will issue straight away today. The same will be made absolute after a period of one month from today.

Dated at Nairobi this 11th day of December, 2002.

JOYCE ALUOCH

HIGH COURT JUDGE