

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

DIVORCE CAUSE NO. 43 OF 2001

H K N C PETITIONER

VERSUS

K N M C RESPONDENT

J U D G E M E N T

The petitioner, H K N C petitioned the court for an order dissolving her marriage to her husband K N C on the grounds of desertion without just cause.

Notice of the filing of the petition was served on the respondent, but he did not file an answer. Thereafter the petitioner sought the Registrar's certificate, and the same was duly issued on 17th May, 2001. The petitioner and the respondent both Hindus were married on 4th March, 1984, at Wanza Union along Murang'a Road in Nairobi. After marriage the couple lived in a house along Ngara Road, Nairobi from 4th March, 1984 to 16th February, 1996. There are two living children of that marriage. Their names and ages are as per para 4 of the petition.

The petitioner holds a British passport but lives in Nairobi whilst her husband the respondent is a Kenyan citizen. The petitioner testified that her husband deserted her on 16.2.96. Prior to that, he had formed the habit of drinking too much alcohol, and not caring for the family. The petitioner had to use her salary to care for the children, pay rent.

She recalled that on 16th February, 1996, the respondent came home drunk and fought her. This was in the evening at around 5.30 p.m. He left the matrimonial house and never returned again.

The petitioner still lives in the same house with her children in the same house. She lamented that her marriage had broken down due to he husband's desertion. She testified further that she has not colluded with her husband to bring this petition. She has not connived with him either to bring this petition.

She prayed the court to dissolve her marriage to the respondent and give her the custody of the 2 children of the marriage. The petitioner's evidence has not been challenged. I believe it, and from it, I find that the respondent's desertion was without just cause. For this reason, I proceed to grant an order dissolving the marriage between the petitioner and the respondent. I also award the petitioner the custody of the 2 children of the marriage. I however condemn the respondent with the costs of this petition.

Dated at Nairobi this 4th day of October, 2001.

JOYCE ALUOCH

PUISNE JUDGE