



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MOMBASA**  
**DIVORCE CAUSE NO.9 "A" OF 1996**

**A M ..... PLAINTIFF**

**- versus -**

**Y J M ..... DEFENDANT**

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

The Petitioner A M is a Swiss national who on 31-1-92 married the Respondent a Kenyan citizen in Switzerland. Immediately after their marriage the two came to Kenya and cohabited together at Diani in South Coast of Mombasa. There is no issue of the marriage. The Petitioner says that since marriage the Respondent has not only treated her with cruelty by beating her, selling their household goods secretly but cohabiting openly with another woman with whom he has fathered 2 children, F and A. She says the husband made life intolerable for her and she had to move out of the matrimonial home on or about 1995 and since then the two have not cohabited again as man and wife.

The law is that desertion as a matrimonial offence can indirectly be committed by the spouse who through intolerable conduct causes the other to leave home and not necessarily by the one who leaves the matrimonial home.

I find that the husband did cause the Petitioner/Wife to leave the matrimonial home and therefore the husband/respondent is the one guilty of desertion. It is further my judgement that he evinced an intention to permanently bring the marriage to an end. The desertion having lasted for more than three years the ground is proved in law.

I therefore dissolve the marriage the subject of this Petition and direct that Decree Nisi issues forthwith to be made absolute in 3 months. Cost not ordered.

**Dated this 11th Day of December, 2000.**

**A.I. HAYANGA**

**JUDGE**