



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**DIVORCE CAUSE NO. 14 OF 2017**

**JAK.....PETITIONER**

**VERSUS**

**HKK.....RESPONDENT**

**JUDGMENT**

1. The Petitioner then a bachelor and the Respondent then a spinster were married on 14<sup>th</sup> September, 2008 in a religious ceremony held in Clark County, Washington in the United States. A certificate of marriage issued to them by the County Auditor, and bearing the official seal of the Auditor Clark County is annexed to the Petition. The couple thereafter cohabited as husband and wife in Nairobi, Kenya. Their marriage was blessed with two (2) issues who were aged as follows at the time of filing the Petition:

i) KK – 3 years 6 months old.

ii) BK - 1 year 8 months old.

2. Both the Petitioner and the Respondent are citizens of the United States of America but the Petitioner is a permanent resident of Kenya, whereas the Respondent is a resident of both Kenya and the United States. The Petitioner works as an engineer and the Respondent is a house wife.

3. The Petition dated 7<sup>th</sup> September, 2017 and filed on 8<sup>th</sup> September, 2017 is premised on grounds of cruelty and desertion said to have been occasioned by the Respondent against the Petitioner.

4. With regard to the acts of cruelty, the Petitioner complained that the Respondent has subjected him to inhumane treatment, public embarrassment and continuous psychological stress and trauma. He accused the Respondent of acts of verbal abuse, restricting him from accessing the issues of the marriage, and defamation of character through one Dr. Carol Watson, whom she colluded with to prepare a grievously defamatory report against the Petitioner.

5. The Respondent eventually deserted their matrimonial home in April, 2016 when she left for the United States with the issues of the marriage without the Petitioner's knowledge. The matter of custody of the children is being handled in the United States.

6. The Petitioner urged that he and the Respondent have engaged in reconciliatory meetings which have yielded no fruits since the Respondent would have nothing to do with him. The Respondent is not keen on coming back to Kenya which is where the Petitioner lives and works to fend for their children. The Petitioner strongly feels that the marriage has irretrievably broken down due to the aforesaid acts of cruelty and desertion, and there being no chance at reconciliation. He therefore asked the court to dissolve the marriage between him and the Respondent.

7. The Petitioner confirmed that this Petition has not been presented or prosecuted in collusion with the Respondent, nor has he condoned or connived with the Respondent in the acts of cruelty and desertion complained of. Further that no previous proceedings with reference to this marriage have been filed in any court within Kenya.

8. On 14<sup>th</sup> June, 2018 the Deputy Registrar certified that the matter was suitable to proceed for hearing as an undefended cause for one day in Nairobi.

9. At the hearing of the Petition on 17<sup>th</sup> January, 2019 the Petitioner stated that attempts to reconcile with the Respondent have failed, and that there was no possibility of reconciliation. The Respondent was served with the Petition and Notice to appear through DHL Express Courier on 22<sup>nd</sup> September, 2017 upon her request to have the documents mailed to her residence in the United States. A Waybill from the courier service produced in court indicates that the Respondent received the pleadings and signed for them. The Respondent did not however file an answer to the Petition nor did she appear in court.

10. This court has carefully considered the facts of this case and it is clear that the marriage between the Petitioner and Respondent has irretrievably broken down with no possibility of salvage. The Petitioner and Respondent are no longer living together and are agreed that attempts at reconciliation have borne no fruit. The court is of the view that the Petitioner has proved the matrimonial offence of desertion against the Respondent on a balance of probabilities and that there is no collusion between the Petitioner and Respondent in bringing this proceedings.

11. From the foregoing, it is evident therefore that the marriage celebrated between the parties herein on 14<sup>th</sup> September, 2008 cannot work and has irretrievably broken down with no hope of being salvaged. In the premise, I find that the Petition has merit and I allow it with orders as follows:

(a) That the marriage celebrated between the Petitioner and the Respondent in a religious ceremony held in Clark County, Washington in the United States on 14<sup>th</sup> September, 2008 is hereby dissolved.

(b) That a Decree nisi dissolving the said marriage is hereby issued to be made absolute thirty (30) days from the date of this judgment.

(c) There shall be no orders as to costs.

**SIGNED DATED and DELIVERED in open court this 7<sup>th</sup> day of February, 2019.**

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**L. A. ACHODE**

**HIGH COURT JUDGE**

**In the presence of .....Advocate for the Petitioner.**