



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

FAMILY DIVISION

DIVORCE CAUSE NO. 114 OF 1991

L G M.....PETITIONER

VERSUS

B J M.....RESPONDENT

RULING

1. The Petitioner herein L G M (hereafter referred to as the Petitioner) filed this Petition against B J M (hereafter referred to as the Respondent on 22nd November, 1991.
2. The Petitioner and the Respondent got married on 2/8/1969 at SHERIA HOUSE, NAIROBI in the Republic of Kenya in a Civil Marriage.
3. The Petitioner is seeking dissolution of the marriage on the ground of desertion.
4. The marriage was blessed with three issues namely:
 - (a) H M - born on 29.12.1969
 - (b) K M - born on 8.03.1973
 - (c) M M - Born on 21.7.1977
5. The Petition was served upon Respondent and she filed an answer on 20.12.1991 in which she asked for access to her children.
6. The Petitioner sought leave of the court to serve the Respondent through advertisement.
7. The Registrar of this Court issued a Certificate and confirmed that the pleadings were in order and that the case should proceed as an undefended cause.
8. The Petitioner who testified as PW1 said he got married to the Respondent on 2.8.1969 and after the marriage, they lived in Nairobi at [particulars withheld] then at [particulars withheld] then they moved to [particulars withheld] and finally at [particulars withheld].
9. He said the marriage was blessed with three issues namely H, K and M M who are all adults now.
10. Pw 1 said in 1983, the Respondent left their house and returned in 1984 and then again in July 1984 she left the Matrimonial home and she was not been seen to date.
11. Pw1 said he learnt later that she travelled to Malawi to look for her roots and came back in 1986 and again went to England with the boys where she was involved in an accident but the boys were not injured.
12. Pw1 said he filed this suit in 1991 but he did not proceed as the best maid of their wedding was trying to persuade him not to proceed but efforts to reconcile them failed when they could not trace the Respondent.
13. The Petitioner said he revived the suit this year and asks the Court to grant the Petition on the grounds of desertion.

14. I have perused the proceedings and pleadings in this case. The Petitioner was seeking three orders in the petition.

(i) Dissolution of the Marriage.

(ii) Custody, Care and Control of the Children

(iii) Costs of and incidental to this cause.

15. I find that there is evidence that the Petitioner and the Respondent have not stayed as husband and wife since 1984 when the Respondent deserted him. I find that there is no love lost between the parties and the marriage serves no useful purpose.

16. I accordingly grant prayer one for dissolution of the marriage on the grounds of desertion.

17. However, the second prayer for custody, care and control of the children is spent as the children are now all adults. The third prayers for costs cannot also be granted as the respondent who was served by substituted means cannot be traced.

18. I accordingly allow the prayer that the marriage between Petitioner and the Respondent be and is hereby dissolved. Each party to bear its own costs of the Petition. Decree Nisi to issue accordingly and to be made absolute after 30 days.

DELIVERED, SIGNED AND DATED IN OPEN COURT THIS 2ND DAY OF NOVEMBER, 2018

ASENATH ONGERI

JUDGE OF THE HIGH COURT OF KENYA, NAIROBI

IN THE PRESENCE OF:

The Petitioner in person.

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