



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MOMBASA**  
**FAMILY DIVISION**  
**DIVORCE CAUSE NO. 1 OF 2016**

**J K.....PETITIONER**

**VERSUS**

**M M N O.....RESPONDENT**

**JUDGMENT**

1. J K, the Petitioner herein married M M N O the Respondent herein at the Registrar's Office in Mombasa on 30.7.04. The couple was issued with marriage certificate serial number [Particulars Withheld] . **The marriage is blessed with 1 child S O G born on 5.9.04.**

2. The Petitioner has filed the Petition herein dated 14.1.16 seeking the dissolution of her marriage to the Respondent. The ground upon which the Petitioner seeks divorce is desertion particulars whereof are set out in paragraph 7 of the Petition. The Respondent was served with the Petition and Notice to Appear but failed to file appearance. The matter therefore proceeded as an undefended cause.

3. In her uncontroverted testimony in support of the Petition, the Petitioner gave vent to the allegations made in her Petition. She stated that following the marriage, the parties cohabited in [Particulars Withheld] till January 2005 when they moved to [Particulars Withheld] . In November 2007, the Respondent told the Petitioner that he was going to Rift Valley to work with the then Electoral Commission of Kenya in the elections to be held in December that year. While still there, the post-election violence broke out and it was difficult for the Respondent to return to Mombasa. They communicated on telephone between December 2007 and January 2008.

4. After the violence ended, the Respondent did not go back to the matrimonial home. The Petitioner made enquiries from his family and his mother confirmed that he was safe at their home in Kakamega. He has since gone quiet on the Petitioner and does not pick her calls. The Respondent does not support their child in any way and only sends her gifts on her birthday every year. Neither the Respondent nor her child has seen the Respondent since 2007. Prior to the Respondent's departure for the Rift Valley, the parties had not fought or disagreed. Indeed the Respondent told her he had gotten an opportunity to work with the then Electoral Commission of Kenya. This was a month to the elections. The Petitioner now wishes to have the marriage dissolved.

5. I have considered the Petition and the uncontroverted testimony of the Petitioner. The Marriage Act, 2014 at Section 66(2) stipulates the grounds upon which a civil marriage may be dissolved. These include:

- a. **adultery by the other spouse;**
- b. **cruelty by the other spouse;**
- c. **exceptional depravity by the other spouse;**
- d. **desertion by the other spouse for at least three years; or**
- e. **the irretrievable breakdown of the marriage”**

6. The Petitioner seeks dissolution of the marriage on the ground of desertion. The Respondent left the matrimonial home in November 2007 telling her that he was going to work for the then Electoral Commission of Kenya in the Rift Valley, a perfectly legitimate reason for going. He never came back and she has never seen him since. This is a sad situation of a young professional woman who marries a man with every hope of a blissful married life. They have a child together and cohabit for 3 years. The husband leaves the matrimonial home in Mombasa for the Rift Valley ostensibly to work, only for him to abandon the family. One can only imagine the emotional and mental anguish the Petitioner suffered during the 2007-2008 post-election violence not knowing whether the Respondent was safe or not. The anguish is further compounded by the fact that the Respondent did not come back even after the end of the violence and has since not returned. He has displayed a total lack of interest not only in the Petitioner but also the child of the marriage. The law requires that for desertion to constitute a ground for divorce, it must be for a period of at least 3 years. The Respondent deserted the Petitioner in 2007. The Petition herein was filed on 14.1.16 almost 7 years later. The Court is satisfied that the ground of desertion has been established.

7. From the foregoing, there is no doubt that that the marriage herein has irretrievably broken down on account of desertion by the Respondent. Since the Respondent deserted the Petitioner in November 2007, the parties have not resumed cohabitation. Accordingly, I pronounce a decree of divorce and order that the marriage solemnised at the Registrar’s Office in Mombasa County on 30.7.04 be and is hereby dissolved. Decree *nisi* to issue and the same to be made absolute within 1 month.

**DATED, SIGNED and DELIVERED in MOMBASA this 17<sup>th</sup> day of February 2017**

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**M. THANDE**

**JUDGE**

**In the presence of: -**

..... **for the Petitioner**

..... **for the Respondent**

.....**Court Assistant**