



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI**  
**DIVORCE CAUSE NO. 83 OF 2013**

**K.G.....PETITIONER**

**-VERSUS-**

**S.S.M.....RESPONDENT**

**JUDGMENT**

This is a petition for divorce filed on 29<sup>th</sup> April 2013 by the Petitioner, K.G against the Respondent, S.S.M for dissolution of the marriage between the Petitioner and the Respondent, an order for payment of alimony by the Respondent to the Petitioner and for costs of the petition.

The particulars of the petition as presented by the Petitioner are that the Petitioner and the Respondent solemnized their marriage on 7<sup>th</sup> July 2009 when they were married at the Office of the Registrar in Nairobi. A copy of the Certificate of Marriage was produced in court as proof of the marriage.

The Petitioner states that she cohabited with the Respondent in Parklands area, within Nairobi County. The marriage was not blessed with any issues. The Petitioner's case is that since the celebration of the marriage, the Respondent has on numerous occasions deserted the matrimonial home and failed to pay for her upkeep. In particular, the Petitioner states that the Respondent deserted the matrimonial home in August 2010 and returned in December 2010. She further states that the Respondent again deserted the matrimonial home in February 2011 and returned in December 2011. That he also deserted the matrimonial home in July 2012 and returned in October 2012. Finally, the Petitioner states that the Respondent has deserted the matrimonial home since November 2012 and has not returned to the said matrimonial home to date.

According to the Petitioner, the Respondent's acts of desertion have led to the marriage irretrievably breaking down. It was for these reasons that the Petitioner asked the court to dissolve the marriage. She further sought for orders inter alia that she be granted alimony and asked the court to make appropriate orders as to costs.

The Respondent was served with the Petition for divorce on 9<sup>th</sup> July 2013. He failed to enter appearance or file a response to the Petitioner's petition. The Deputy Registrar of this court after being satisfied that the Respondent had been duly served and failed to enter appearance and file his response, issued a Registrar's Certificate certifying that this cause was a suitable one to be disposed of by this court as an undefended divorce cause.

The petition was heard on 10<sup>th</sup> November 2016, and the Petitioner gave oral evidence reiterating the

averments in her petition for divorce. She testified that following the celebration of her marriage to the Respondent, she cohabited with the Respondent in Parklands area within Nairobi County. The Petitioner testified that the Respondent has during the subsistence of the marriage deserted the matrimonial home on several occasions. She testified that the Respondent left the matrimonial home without informing her in the periods between August 2010 to December 2010, February 2011 to December 2011, July 2012 to October 2012 and November 2002 to date. The Petitioner testified that her marriage to the Respondent has irretrievably broken down.

From the pleadings and the oral evidence adduced in this case, the issue for determination by this court is whether the Petitioner adduced sufficient evidence to warrant the grant by this court of the orders sought in her pleadings. The evidence on record shows that the Petitioner and the Respondent contracted a civil marriage. Thus, the applicable law concerning the dissolution of their marriage is to be found in **Section 66** of the **Marriage Act 2014** which provides:

**“(1) A party to a marriage celebrated under Part IV may petition the court for the separation of the parties or the dissolution of the marriage unless three years have elapsed since the celebration of the marriage.**

**(2) A party to a marriage celebrated under Part IV may only petition to court for the separation of the parties or the dissolution of the marriage on the following grounds-**

- 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."***

By her petition of 29<sup>th</sup> April 2013 the Petitioner seeks to have her marriage to the Respondent dissolved on the grounds of alleged desertion. The grounds of desertion are questions of fact which require this court to assess them based on the evidence adduced in court.

The evidence on record makes it clear that the Respondent has been away from the matrimonial since November 2012. This amounts to desertion on the part of the Respondent for over 3 years. The Respondent did not file answer o petition and or cross petition and he did not adduce any evidence in court to rebut the allegations of desertion made by the Petitioner in her Petition for divorce. However, for this court to dissolve the marriage on the ground of desertion, the Petitioner is required to demonstrate that the Respondent has deserted the matrimonial home for at least three years prior to petitioning for divorce.

The Petitioner did not satisfy this requirement prior to her filing the petition for divorce. The Petitioner’s case for dissolution of the marriage on the ground of desertion has therefore been proved to the required standard of proof. The Petitioner claims that because of the Respondent’s desertion, the marriage has irretrievably broken down. The uncontroverted evidence of the Petitioner is that she is no longer living with the Respondent. To date, the parties are living separate lives. The Petitioner’s marriage to the Respondent has clearly broken down.

The fact that the Respondent was not willing to participate in the proceeding is an indication that he is not interested in salvaging the marriage.

This court therefore finds that the Petitioner has proved to the required standard of proof that her marriage to the Respondent has irretrievably broken down. On the prayer for payment of alimony, this court finds that the Petitioner did not adduce any evidence in court to prove her case on the claim. The claim for

alimony though provided for by Section 77 of the Marriage Act 2014. However, the Petitioner did not file affidavit of means and the Respondent has not disclosed any evidence of his financial resources and obligations. The application for alimony at this cannot be determined.

**DISPOSITION**

Accordingly, judgment is entered as prayed against the Respondent for the following orders;

- a. The marriage between the Petitioner and the Respondent solemnized on 7<sup>th</sup> July 2009 is hereby dissolved.
- b. Decree nisi to issue and in thirty (30) days decree absolute to issue in 3 months
- c. Costs of the suit.

**DELIVERED SIGNED & DATED AT NAIROBI THIS 13TH DAY OF FEBRUARY 2017**

**M. W. MUIGAI**

**JUDGE**

*In the presence of:*

.....