

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MOMBASA

FAMILY DIVISION

DIVORCE CAUSE NO. 71 OF 2015

E J FPETITIONER

VERSUS

J O MRESPONDENT

JUDGMENT

1. By a Petition dated 5.10.15, E J F, the Petitioner herein seeks the dissolution of her marriage to J O M the Respondent herein. On 29.11.08, the Petitioner, then a spinster married the Respondent, then a bachelor at [Particulars withheld] in Mombasa. The couple was issued with marriage certificate serial number [Particulars withheld]. **The marriage is blessed with 1 child D W born on 15.11.10.**

2. The ground upon which the Petitioner seeks divorce is desertion, the particulars whereof are set out in paragraph 8 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 stated that after their marriage, the parties cohabited in Mtopanga. **They were blessed with 1 child D W born on 15.11.10.** In November 2011 however the Respondent left their matrimonial home for Migori his home village and has not returned since. When the Petitioner tried to get in touch with him, he told her that he had relocated to the village. In January 2016, when the Respondent was served with the Petition, he declined to accept service on the ground that he had moved on and married another wife under Luo customary law. This is set out in the Affidavit of Service sworn by Nicodemus Otieno on 19.1.16. She prayed that the marriage be dissolved.

4. I have considered the Petition and the uncontroverted testimony of the Petitioner. The marriage was celebrated at [Particulars withheld]. It is therefore a Christian marriage. The ground upon which the Petitioner seeks dissolution of the marriage is desertion. The Marriage Act, 2014 at Section 65(c) stipulates that desertion is one of the grounds upon which a Christian marriage may be dissolved as follows:

“desertion by either party for at least three years immediately preceding the date of presentation of the petition;

5. According to the Petitioner’s testimony, the Respondent left the matrimonial home in November 2011 telling her that he was going to Migori. He never returned and she has never seen him since. He told her he had moved back to the village. 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 immediately preceding the date of presentation of the petition. The Respondent deserted the Petitioner in November 2011. The Petition herein was filed on 10.12.15 over 4 years after the Respondent deserted the Petitioner which is well after the statutory period. The Court is satisfied that the ground of desertion has been established.

6. The facts herein point to a marriage that has irretrievably broken down on account of desertion by the Respondent. Accordingly, I pronounce a decree of divorce and order that the marriage solemnised on 29.11.08 at [Particulars withheld] in Mombasa 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 3rd day of March 2017

M. THANDE

JUDGE

In the presence of: -

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

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

.....**Court Assistant**