

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

DIVORCE CAUSE NO. 72 OF 2012

L P N L..... PETITIONER

-VERSUS-

V N L.....RESPONDENT

JUDGMENT

1. By an amended divorce petition dated 24th February 2015, the petitioner prays for orders that **the marriage between him and the respondent be dissolved.**

2. The ground upon which the petition is based is constructive desertion, the particulars of which are set out at paragraph 8 of the petition. It is alleged that on 9th March, 2011, the respondent left the matrimonial home to reside elsewhere and the parties have never cohabited since then.

3. From the records, the respondent did not file an answer to petition nor a cross-petition. This cause therefore proceeded undefended. The petitioner gave his sworn testimony on 15th October 2015.

4. The respondent's failure to file any response to the petition despite being served, can only be interpreted to mean that she is altogether not interested in the said marriage, and would therefore not mind if the said marriage is dissolved.

5. It should be noted that for desertion to constitute matrimonial offence for divorce, it must run for a period of at least three years immediately preceding the presentation of the petition for divorce. The amended petition was presented to court on 26th February 2015. This court has been told that the respondent deserted the matrimonial home on 9th March 2011.

6. The petition for divorce was thus brought within the right time in so far as the ground of desertion is concerned. In the circumstances of the instant case, the ingredients of desertion have been satisfied and this court finds the matrimonial offence of desertion duly proved. Accordingly, the ground for desertion succeeds and the petition is allowed.

7. I therefore make the following orders:

a. **That the marriage solemnized on 3rd December, 1988 at Nairobi District between L P N L and V N M be and is hereby dissolved.**

b. **Decree absolute to issue forthwith.**

DATED, SIGNED and DELIVERED at NAIROBI this 12TH DAY OF FEBRUARY, 2016.

W. MUSYOKA

JUDGE