

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

DIVORCE CAUSE NO.2 OF 2014

M A K PETITIONER

VERSUS

A A O RESPONDENT

JUDGMENT

1. **M A K**, (the petitioner), then a bachelor and **A A O** (the respondent) then a spinster, were married in a civil marriage under the Marriage Act Cap 150 Laws of Kenya at the Registrar's office Nairobi on 27th, august, 2010. The couple then moved to Dubai, where they cohabited for sometime. Later the petitioner in search of what he said were greener pastures, moved to Bermuda where he got a new job and left his wife, the respondent in Dubai.

2. When the petitioner returned to Dubai in 2012, he was shocked when the respondent informed him that she was no longer interested in the marriage and had decided to move on with life. She asked the petitioner to mind his own affairs and move on as the respondent had done.

3. From that point, according to the petitioner, parties have lived separately and have not seen each other as husband and wife. The petitioner on sensing that their marriage was not working, even after he tried to reconcile, decided to file this petition seeking to dissolve his marriage with the respondent. He therefore filed this petition on 30th January, 2014 seeking divorce.

4. Though served, the respondent did not enter appearance or file an answer, and the court directed that the cause do proceed as undefended. The petitioner then set down this cause for hearing and on 2nd November, 2016 the cause proceeded undefended.

5. The petitioner who testified as **PW1**, told the court that after solemnization of their marriage, they moved to Dubai where both of them worked and after about one year, he got a job and relocated to Bermuda leaving the respondent in Dubai. The petitioner told the court that although he tried to maintain contact with the respondent, he noticed that the respondent was increasingly becoming disengaged from him and would never call him. He decided to visit his wife in Dubai but was surprised to find that she was already with another man and she candidly told him that she was no longer interested in their marriage and had decided to move on with life. According to the petitioner, the respondent asked him to forget about their marriage and move on. The petitioner further told the court that he again met the respondent in Nairobi in 2012 and even tried to involve family members to help save the marriage but the respondent would hear none of it. She was unwilling to discuss the matter, and that marked the end of their marriage. The petitioner then made up his mind to file the present petition to dissolve the marriage. The petitioner told the court that he is a young man and would like to move on with life hence urged the court to allow his petition and free him from this bondage, which was stressing him.

6. This is a young couple. They were 26 and 25 years respectively when they entered into this marriage. They were hopeful, as new couples always do that their marriage would be blissful and looked forward to the rewards of marriage. However, just a few years into the marriage, they were stalked with problems. Their marriage, according to the petitioner crumbled even before they realised they were in marriage. The petitioner was left with no option but to approach this court for dissolution of the marriage.

7. **section 8(1)** of the Matrimonial Causes Act, Cap 152 laws of Kenya (now repealed) allowed a husband

or wife to present a petition for dissolution of marriage on grounds, namely; that the respondent has since the celebration of the marriage committed adultery, has deserted the petitioner without cause for a period of at least three years immediately preceding the presentation of the petitioner; or has since the celebration of the marriage treated the petitioner with cruelty; or is incurably of unsound mind and has been continuously under care and treatment for a period of at least five years immediately preceding the presentation of the petition.

8. The petitioner has relied on both adultery and desertion. He told the court that the respondent had become cold towards him and had openly told him that she was not interested in the marriage. She went as far as telling the petitioner to mind his own life and move on because she had already decided against the marriage. This is desertion in every sense; and denial of conjugal rights.

9. Once married, parties have certain obligations to each other and where a wife or husband categorically urges the other to mind his/her own business, the only conclusion that can be drawn from such a conduct is that the respondent has deserted the petitioner and the petitioner would be better off going his way. Such a marriage cannot be said to be in existence any more.

10. The petitioner further told the court that when he visited the respondent in Dubai he found her in an intimate relationship and when he confronted her, she admitted that she was in a relationship. His attempt to reconcile never went far because the respondent was negative about it. As I watched the petitioner testify, he appeared traumatised with the occurrences that have befallen their marriage. He told the court that he felt frustrated and the only relief was to set him free and to use his own words, “**to allow me decide my destiny in life because I am still young.**” He appeared to have lost all hope in this marriage.

11. The respondent did not enter appearance or file an answer. The evidence of the petitioner is therefore uncontroverted. The respondent did not show interest in this cause and the only inference that can be drawn is that she had no answer to these allegations.

12. For the above reasons, I find that the petitioner has proved his case against the respondent on a balance of probability. I therefore allow the petition and enter judgment for the petitioner against the respondent. The marriage between the petitioner and the respondent is hereby dissolved on grounds of desertion and adultery. A decree *Nisi* shall issue forthwith. However due to the circumstances of this case and the distance the petitioner has travelled, the *Decree Nisi* be made **absolute** within three months from the date of this judgment.

Dated and delivered at Kakamega this 15th day of November, 2016.

E.C. MWITA

JUDGE