

IN THE HIGH COURT OF KENYA AT KAKAMEGA

DIVORCE CAUSE NO. 4 OF 2014

S S. K PETITIONER

V E R S U S

S S B RESPONDENT

J U D G M E N T

In his petition dated 15.5.2014 the petitioner is seeking divorce on the ground that the respondent has deserted the matrimonial home and that he has been denied conjugal rights. The petitioner testified that they got married in 1991 under Hindu Law. They had one son (**D K**). They lived together in Kakamega. In 2002 the respondent left him and went away with all her belongings. Since then they have never lived as husband and wife. The parties later entered into an agreement whereby the petitioner paid the respondent **KShs.1.2 million** plus advocate's fees. Under the agreement the respondent was free to remarry. The petitioner undertook to pay maintenance for the child agreed at KShs.10,000/= per month.

Section 10 of the now repealed Hindu Marriage and Divorce Act gives the grounds for divorce under that Act. **Section 10 (b)** states that a divorce can be granted if the respondent has deserted the petitioner for a period of at least three (3) years before the petition is filed. Currently under the new Marriage Act 2014 **section 70** gives the grounds for dissolution of a Hindu marriage. One of the grounds is that the marriage has irretrievably broken down and another one is desertion. It is clear that the parties parted ways from 2002 and to date they do not live as husband and wife. The respondent did not contest the petition although she was served. The petitioner does not intend to have custody of the child and I do order that the child shall stay with the respondent and the existing arrangement shall continue. From the evidence on record I am satisfied that the marriage has irretrievably broken down and there is no hope of reconciliation. I do find that the petitioner has proved his case and the marriage is hereby annulled. The petitioner and the respondent shall henceforth cease to be husband and wife. A decree of annulment and divorce shall issue in pursuant to section 60 of the Marriage Act 2014. Copies of the certificate shall be sent to the Registrar as per the requirements of **section 60** of the Act. There shall be no orders as to costs.

Delivered, dated and signed at Kakamega this 17th day of October 2014

SAID S. CHITEMBWE

J U D G E