



REPUBLIC OF KENYA

High Court at Mombasa

Divorce Cause 26 of 2011

C. V. M. PETITIONER

VERSUS

S. L. W. K RESPONDENT

JUDGMENT

The petitioner **C. V. M.** filed this petition dated 13th June, 2011 seeking the dissolution of his marriage to the respondent **S. L. W. K.** Despite having been properly served with both the petition and a summons, the respondent failed to either enter appearance or to file a reply to the petition. The matter therefore proceeded as an undefended cause.

In his evidence the petitioner told the court that he and the respondent got married to each other on 24th April, 1999 at the Holy Family Basilica in Nairobi. He produces a marriage certificate serial No.[....]as proof of this fact. In addition the petitioner filed in court on 27th December, 2012 a letter dated 27th December, 2012 from the Holy Family Basilica confirming the celebration of that marriage.

After the celebration of the marriage the couple cohabited as man and wife in Mombasa. Their union was not blessed with any children. In October, 2000 the petitioner told the court that the couple had a disagreement which led the respondent to walk out of the matrimonial home. Family and friends intervened and she returned. One month later the respondent again left the matrimonial home and has not returned to date. The petitioner later learnt that the respondent had travelled to the United Kingdom without his knowledge and/or authority. Upon her return to Kenya the respondent made no effort to get in touch with or to communicate with the petitioner. The couple have now lived apart for ten (10) years leading the petitioner to seek this divorce.

Section 6(1) of the Matrimonial Causes Act Cap 150 Laws of Kenya provides:

“6(1) No petition for divorce shall be presented to the court unless at the date of the presentation of the petition three years have passed since the date of marriage.”

In this case the couple celebrated their marriage in April, 1999. This petition for divorce was not filed until June, 2011 a full twelve (12) years after the marriage. As such I find that this petition does comply with section 6(1) of Cap 150 and is properly before this court.

The evidence of the petitioner is that the respondent walked out of the matrimonial home in the year 2000 and has never returned. His evidence remained unchallenged and uncontroverted since the respondent chose not to participate in these proceedings. Therefore if there was some legitimate reason as to why the respondent left the matrimonial home, this reason has not been divulged to the court. Section 8(1)(b) of

the Matrimonial Causes Act provides for desertion as grounds for divorce. Section 8(1)(b) provides:

“8(1) A petition for divorce may be presented to the court either by the husband or the wife on the ground that the respondent –

(a)

(b) Has deserted the petitioner without cause for a period of at least three years immediately preceding the presentation of the petition.....”

In this case the desertion occurred when the respondent walked out of the matrimonial home. She proceeded to travel to the United Kingdom without bothering to consult her husband. Even upon her return to Kenya the respondent has shown no inclination or desire to meet the petitioner. It is clear that this is a willful and calculated desertion. The petitioner cannot be expected to remain in union with a wife who clearly wants nothing to do with him. The couple has lived apart for twelve (12) years. I find that the ground of desertion is proved and on this basis I do allow the prayer for divorce. Decree nisi to issue to be made absolute within a period of three (3) years from today’s date.

Dated and delivered in Mombasa this 10th day of April, 2013.

M. ODERO

JUDGE

In the presence of:
No party present
Court Clerk Mutisya