



HKK.....PETITIONER

VERSUS

JWM.....RESPONDENT

JUDGMENT

On 16th November 2002, **HK** herein after "*the petitioner*" a spinster married **JWM** hereinafter "*the Respondent*" then a bachelor, at the Catholic Church Kambu in Makueni District. By then both the Petitioner and Respondent were teachers. Soon thereafter, they were blessed with 3 issues of marriage namely;

- KM born in 1993
- IK born 1995
- KM born 1998

All was a bed of roses until 2007 when problems started besetting the marriage. The respondent began subjecting the petitioner and the issues of marriage to such cruelty that the petitioner could no longer reasonably be expected to live with him. He had refused to pay for school fees for all the children as well as provide for their upkeep. He was only willing to do so in respect of one issue. The respondent too started having affairs with other women. In the end he deserted the petitioner. As a result of the foregoing, the Petitioner felt that the marriage had irretrievably broken down, hence this petition for the dissolution of the same.

Upon the respondent being served with the petition, he immediately filed an answer to the petition and cross-petition. In his answer to the petition, he denied the petitioner's averments that he had deserted her; if anything; it was the petitioner who had deserted him upon joining and graduating from Catholic University. He also denied being cruel to the petitioner and their children. If anything, he turned the heat on the petitioner. She was the one who was cruel to him by abandoning him and the children of marriage. Otherwise he was a loving and caring husband who had provided for the petitioner and the issues of marriage with love and emotional support even after, the petitioner deserted the matrimonial home without any reasonable excuse or justification whatsoever. On account of the desertion aforesaid, the respondent also sought for the dissolution of the marriage.

When both the petition and cross-petition came before me for hearing on 9th May, 2012, the petitioner failed to turn up and her petition was dismissed. The court then allowed the respondent to prosecute his cross-petition. Mid way through the evidence of the respondent, the petitioner pitched tent and she was allowed into the proceedings.

The respondent in his evidence confirmed the fact of the marriage, the marriage resulting into 3 issues and the fact that they were all teachers by profession. They had cohabited as man and wife peacefully from the date of marriage to 2003 when the petitioner joined Catholic University. When she graduated, she requested to be posted to teach at a school 100km away from the matrimonial home; without consulting him. Since then they had not resumed cohabitation. Effectively therefore, the petitioner had

deserted him since 2003. The marriage had in the premises irretrievably broken down and could not be salvaged. He denied having colluded, connived or being accessory to or condoned the petitioner's desertion. He therefore prayed for the dissolution of the marriage on that account.

Given a chance to cross-examine the respondent, the petitioner declined to do so. She also declined to take the stand to counter what the respondent had testified to. She was otherwise willing to be contend with whichever decision the court would come to on the petition.

In his submissions, **Mr. Mungata**, learned counsel for the respondent stated that the cross-petition had been proved to the required standard. The evidence on record was un challenged and undisputed. It was clear that the petitioner was in desertion for a period in excess of 3 years before the presentation of the petition. That was evidence of the marriage having irretrievably broken down. For that reason, the marriage should be dissolved. The petitioner offered no submissions in response.

Under section 8 of the Matrimonial Causes Act, a marriage such as this one, can be dissolved on any of the following grounds:-

- Adultery
- Desertion
- Cruelty
- Unsoundness of mind
- By wife only, on the ground that her husband had, since the celebration of the marriage, been guilty of rape, sodomy or bestiality.

In this cause, the respondent has sought to dissolve the marriage on account of desertion. For him to succeed however, he must demonstrate that the petitioner had deserted him without cause for a period of at least 3 years immediately preceding the presentation of the petition.

From the unchallenged and uncontested evidence of the respondent, the petitioner deserted him without just cause or reason in 2003 when she decided upon graduating from Catholic University and without consulting him elected to apply to teach in a school 100kms away from the matrimonial home. Since then they have never resumed cohabitation. The petitioner has never been to the matrimonial home either. This petition was filed in court on 17th June, 2010 and the cross-petition on 18th August, 2010. Either way, the threshold of 3 years had been attained. In other words, the cross-petition met the requirement that for one to successfully rely on the ground of desertion in a petition for dissolution of a marriage, the Petitioner must show that the respondent had been in desertion away from the petitioner for a period of at least 3 years immediately preceding the presentation of the petition. In the absence of any other evidence to the contrary, I am satisfied that the petitioner had deserted the respondent without cause since 2003. The respondent had opportunity to challenge the evidence of the respondent in this regard and perhaps show just cause why her desertion was necessary. She elected not to do so. I can only conclude that she had no cause, just or otherwise to desert the respondent. I therefore find that the cross-petition has been proved to the required standard. Accordingly, I grant it. Accordingly, a *decree nisi* shall forthwith issue and be made absolute as required under the Matrimonial Causes Act and the rules made there under. I make no order as to costs.

RULING DATED, SIGNED, and DELIVERED at MACHAKOS this 6TH day JULY, 2012.

**ASIKE -MAKHANDIA
JUDGE**