



**PJR ..... PETITIONER**

**VERSUS**

**RJJW ..... RESPONDENT**

**JUDGMENT**

By a Petition for divorce dated 6<sup>th</sup> December, 2011 and filed in Court on 8<sup>th</sup> December, 2011, the Petitioner prays for orders that-

- (a) *The marriage between the Petitioner and the Respondent be dissolved***
- (b) *The Petitioner and Respondent be granted joint custody of the issue of the marriage***
- (c) *The costs of this petition be provided for.***

On 31<sup>st</sup> January, 2012, the Respondent was served with a copy of the Petition and Notice to Appear. She duly acknowledged service on the same date, and the acknowledgement was filed in court on 13<sup>th</sup> March, 2012. However, she did not enter appearance. Upon her default to do so, the court proceeded to hear the petition her absence notwithstanding.

The Petitioner gave sworn testimony and told the court that he married the Respondent on 1<sup>st</sup> August, 2003. He produced a copy of their marriage certificate as evidence of the marriage. The couple cohabited in [PARTICULARS WITHHELD], K[...] Road, Nairobi, within the Republic of Kenya. Their union was blessed with one issue, a son, born on 22<sup>nd</sup> November, 2006.

The Petitioner's ground for divorce is that since 5<sup>th</sup> September, 2008, the Respondent constructively deserted the Petitioner. The particulars of the desertion were that on that fateful date, at 10pm, the Respondent returned to the matrimonial home and told the Petitioner to leave otherwise she would kill him. Fearing physical assault, the Petitioner left the matrimonial home, and the Petitioner and the Respondent have been living separate lives since that date.

A spouse who leaves the matrimonial home for more than three years with the intention of never coming back is guilty of the matrimonial offence of desertion which is a ground for divorce. Although in the instant case it was the Petitioner who actually left the matrimonial home, it was not his wish to leave. Instead, it was the Respondent who forced him to leave by threatening to kill him if he did not do so. He therefore left in order to save his life, thereby rendering the Respondent guilty of constructive desertion.

Since the Respondent did not enter an appearance, it means that she did not care to defend herself, and most probably she had nothing to say in self defence. Given that the Petitioner's evidence was uncontroverted, I find that he has proved the matrimonial offence of constructive desertion and that he is entitled to an order for divorce as prayed. I accordingly make the following orders-

- (a) *The marriage solemnized at the Registrar's Office, Nairobi, on 1<sup>st</sup> August, 2003 between the Petitioner and the Respondent herein is hereby dissolved.***

- (b) *Decree nisi to issue.*
- (c) *Decree nisi to be made absolute after 14 days upon application by either of the parties*
- (d) *The Petitioner and the Respondent are hereby granted joint custody of the issue of the marriage.*
- (e) *Each party to bear its own costs.*

**DATED** and **DELIVERED** at **NAIROBI** this 10<sup>th</sup> day of July, 2012.

**L. NJAGI**  
**JUDGE**