



RNN PETITIONER

VERSUS

JSM RESPONDENT

J U D G M E N T

This is a petition filed by the petitioner RNN on 21st June 2011. It was filed against JSM as respondent. The prayers are as follows:-

- (i) **The marriage between the petitioner and the respondent be dissolved and a divorce decree absolute be issued.**
- (ii) **The custody of the children be granted to the petitioner absolutely.**
- (iii) **The respondent do provide reasonable maintenance for the issues the marriage only if he so wish.**
- (iv) **Each party to bear his/her costs of these proceedings.**
- (v) **Any other relief that the court may deem fit and just to grant.**

It was averred in the petition that the petitioner and the respondent got married on 10th December 1994 under the **African Christian Marriage and Divorce Act (Cap 151)** and that there were two issues of the marriage that is **NKS – 16 years**, and **JJMaged 9 years**. It was averred that the respondent had committed acts of cruelty and desertion, thus eliciting the filing of the petition herein. Particulars of cruelty and desertion were given in the petition.

The Petition and Notice to Appear were served on 21st July 2011. The respondent acknowledged the said service by signing for the same.

The respondent did not enter appearance or file any answer to the petition.

The Petition therefore proceeded to hearing as an undefended case. Though the respondent was served with hearing notice, he did not attend the hearing.

On the hearing date, only the petitioner testified as PW1. It was her evidence that she was a counselor. That she got married to the respondent under the **African Christian Marriage and Divorce Act** on 10/12/94. That they cohabited together until 2008. They got two children. The respondent worked in [withheld] and the petitioner worked in [withheld]. The matrimonial home was at [withheld]. The respondent was transferred to Nairobi in 2008. Shortly thereafter, he forced the petitioner to resign from her job, but in June 2008, he disappeared and stopped communicating and supporting the petitioner and the two children of the marriage. As at the time of filing the petition, the respondent had been away from the petitioner for more than 4 years. The petitioner discovered that he was living in Mombasa.

It was her evidence that since 2008, she was single handedly taking care of and educating the two children. She asked for divorce and the grant of the prayers sought in the petition.

This is an undefended petition. **Section 8 of the Matrimonial Causes Act (Cap 152)** lists the grounds on which a marriage may be dissolved. They are adultery, desertion, cruelty, being incurably of unsound mind, and also where a husband has been guilty since marriage of rape, sodomy and bestiality. The grounds relied upon herein are cruelty and desertion. Desertion has to be for a continuous period of three years, in order to be a ground for dissolution of a marriage.

Considering the evidence on record, together with the uncontroverted particulars of cruelty and desertion listed in the petition, I am of the view that the petitioner has established a case for dissolution of the marriage. In my view, the marriage has broken down irretrievably and cannot be salvaged. More than four (4) years disappearance from a spouse without any communication, association or support is not a short period. The respondent has to date not shown any interest in reviving the marriage. He cannot be forced to remain in a union in which he does not wish to continue or to value. For that reason, I find no basis for not dissolving the marriage. All the prayers sought in the petition are grantable, though with some moderation.

Consequently, I allow the petition and order as follows:-

- 1. The marriage between the petitioner and the respondent is hereby dissolved. A decree for divorce nisi is hereby granted to be made absolute after the lapse of six (6) months.**
- 2. The custody of the two children is granted to the petitioner. However, the respondent will have reasonable access to the children if he chooses so to do.**
- 3. The respondent will provide reasonable maintenance for the two children of the marriage only if he so wishes.**
- 4. Each party will bear their respective costs of these proceedings.**

It is so ordered.

Dated and delivered at Machakos this **10th** day of **October** 2012.

George Dulu

Judge

In presence of:-

Makau holding brief Jaoko for Petitioner

N/A for Respondent

Nyalo – Court clerk