

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

DIVORCE CAUSE NO.1 OF 2010

B.H. S.....PETITIONER

VERSUS

B.M. S.....RESPONDENT

J U D G M E N T

The petitioner and the respondent were married under the **Marriage Act** on 8th October 1983 at the St. [.....]Church in Nairobi. The petitioner and the respondent cohabited as husband and wife in Nairobi and Mombasa. The couple was blessed with four children born between 1984 and 1994. The petitioner is resident in Kenya while the respondent is a resident of the State of Colorado in the United States of America. According to the petitioner, the respondent deserted from the matrimonial home in 2001 when she relocated to the United States of America with their four children. The petitioner averred that the respondent, since deserting from the matrimonial home, had not given an indication when she would return back to the country. The petitioner is of the view that his marriage to the respondent had irretrievably broken down with no possibility of salvage on account of the respondent's desertion. The petitioner therefore prayed that his petition for divorce be granted.

The respondent was served with the petition for divorce. She duly entered appearance but failed to file any pleadings in answer to the petition. The Deputy Registrar of this court certified this cause ready for hearing. This court was satisfied that the respondent was duly served. It directed the hearing of the petition to proceed, the absence of the respondent notwithstanding. At the hearing of the petition, the petitioner adduced oral evidence which essentially reiterated the contents of the petition for divorce. This court was satisfied that indeed the prolonged period of separation between the petitioner and the respondent meant that their marriage was no longer viable. The petitioner and the respondent have been separated for about ten years. The chance of the petitioner and the respondent being reconciled is remote to say the least. This court holds that the petitioner established the matrimonial offence of desertion.

In the premises therefore, the marriage solemnized on 8th October 1983 between the petitioner and the respondent is hereby dissolved. *Decree nisi* dissolving the said marriage is hereby issued. The said *decree nisi* shall be made absolute thirty (30) day from the date of this judgment. There shall be no orders as to costs. It is so ordered.

DATED AT NAIROBI THIS 4TH DAY OF MARCH, 2011

L. KIMARU

JUDGE