

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

DIVORCE CAUSE NO.90 OF 2009

J.E.M.....PETITIONER

VERSUS

M.W.....RESPONDENT

J U D G M E N T

The petitioner and the respondent were on 30th December 1992 at Thika married under the **African Christian Marriage and Divorce Act**. According to the petitioner, after their marriage, the petitioner and the respondent cohabited together as husband and wife. They were blessed with two (2) issues born respectively in 1973 and 1974. The petitioner avers that in November 1975, the respondent deserted the matrimonial home taking with her the two children of the marriage. Since then, although the petitioner had tried to be reconciled with the respondent, the petitioner and the respondent have been separated. The petitioner stated that after the separation, the respondent has since given birth to two other children by another relationship. It was the petitioner's case that since he has been separated from the respondent for a period of more than thirty five (35) years, he should be granted his petition for divorce. The respondent was served with the petition for divorce. She did not enter appearance. Neither did she file an answer to the petition. The petition was therefore unopposed.

During the hearing of the petition, the petitioner essentially reiterated the contents of the petition in his oral testimony. This court has carefully considered the said evidence. It was clear to the court that the petitioner established to the required standard of proof that the respondent indeed deserted the matrimonial home more than thirty five (35) years ago. It was evident to the court the chance of a couple that has been separated for such a long period of time to be reconciled is remote to say the least. Both the petitioner and the respondent appear to have lived their separate lives without reference to each other. The respondent has even gone ahead to have other children with another man. In the premises therefore, this court will allow the petition for divorce on the ground of desertion.

The marriage solemnized between the petitioner and the respondent on 30th December 1972 is hereby dissolved. *Decree nisi* dissolving the said marriage is hereby issued. The same shall be made absolute thirty (30) days from the date of this judgment. There shall be no orders as to costs.

DATED AT NAIROBI THIS 4TH DAY OF MARCH, 2011

L. KIMARU

JUDGE