



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)

Divorce Cause 49 of 2002

P M K PETITIONER

VERSUS

R M M and

E M RESPONDENTS

JUDGMENT

The Amended Petition filed by the Petitioner herein was certified as an undefended cause by the learned Principal Deputy Registrar on 26th July, 2007.

On the day fixed for hearing the Petitioner testified. According to his evidence he formalized his marriage with the Respondent on 14th August, 1998 after celebrating the same through customary rites in the year 1992. He produced certificate of marriage to support his evidence on solemnization of the marriage between the parties before the court.

The parties have been cohabiting at a place along [Particulars Withheld] Estate, Nairobi. The Respondent came to the Petitioner with a child from her previous relationship and the Petitioner had accepted her as their own. They have one male child born on 12th November, 1990. Both the children are living with the Respondent and the Petitioner caters for their education, medical needs and maintenance.

The problem in the marriage started after their formalization of the marriage in 1998. The Petitioner was awarded a scholarship in U.S.A. for doctorate degree in the year 1998 and he left the children and the Respondent to pursue the study for his Ph.D. degree. Before leaving Kenya he arranged for the transfer of his matatu business and right to receive his salary at Moi University to the Respondent so that she would not have any difficulty in looking after herself and family. He testified that since their cohabitation they had supported his aged mother who was staying at a small place on their ancestral land. The Respondent promised to continue to do so after he left Kenya, but did not and lied to the Petitioner that she was doing so.

It was only when he talked on phone with his mother that the truth was revealed. He managed to get short leave from his course and came to Kenya In 1999. He could not trace either the Respondent or his children as she had moved their house, the school of the children and left the job of a High school Teacher. Due to short time, he had to return to U.S.A. for his study.

He then came back in the year 2000 and traced the house wherein she was living with the

children. He obtained help of A.P Officers to visit her and get his documents which he had left with her at their home at [Particulars withheld]. He could not find her but met his children.

In 2001, he came back to Kenya to pursue his research – part of his course and met the Respondent who was totally unwilling to come back to him. He then filed the Amended petition on 2nd September, 2005 seeking dissolution of the marriage on the ground of desertion.

The Petitioner also confirmed that he has not filed this petition in collusion with the Respondent and that there is no previous proceedings filed by any of the parties in respect of this marriage. He denied that he had been accessory to the desertion by the Respondent.

The Petitioner gave his testimony with frankness and sincerity, and the same remains uncontroverted. I shall thus accept the same as credible evidence and shall rely thereon.

The Petitioner has without doubt proved, as per the standard required in the matrimonial causes, that the Respondent has deserted him without any plausible reason and that the Petitioner was not accessory to that desertion. The petition is filed after lapse of three years from the date of desertion.

Having proved his case, the Petitioner in law is entitled to the prayer of dissolution of the marriage and I do allow the same and grant the order that the marriage solemnized between the parties be dissolved and Decree Nisi be made absolute within 60 days.

I shall not make any order on costs.

Dated and signed at Nairobi this 2nd day of October, 2008.

K.H. RAWAL

JUDGE

2.10.08