



REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Divorce Cause 26 of 2012

A.N.K.....PETITIONER

VERSUS

K.W.K.....RESPONDENT

JUDGEMENT

1. The delay in delivery this judgment which was caused by my preparation for and attendances before the Judges & Magistrates Vetting Board is regretted.

2. The petitioner herein **A. N. K.** a Kenyan, married the respondent **K. W. K.** also a Kenyan citizen on 17th November 2002 at the Register Office, Brighton and Howe, U.K, under the **Marriage Act 1949.**

3. The petitioner filed this petition, praying that her marriage to the respondent be dissolved, on the ground that the same has irrevocably broken down for reasons of constructive and actual desertion as particularized in her paragraph 5 of the petition.

4. The respondent was served with the petition at *{particulars withheld}* on 5th March 2012. He did not enter appearance or file any papers in response thereto. The petition therefore, proceeded undefended, wherein the petitioner testified orally and produced a certified copy entry of marriage issued by the [Registrar of Marriages](#), Brighton and Howe, United Kingdom on 1st December 2003, evidencing the marriage between the petitioner and the respondent, contracted on 17th November, 2002.

5. The particulars of the respondent's desertion towards the petitioner, as stated as follows:-

(a) ***That during the subsistence of the marriage the respondent has constructively and literally deserted the petitioner.***

(b) That during the subsistence of the marriage the respondent was cold and frosty and consistently failed to reciprocate the warmth and support shown him by the petitioner.

(c) That the respondent did not view his marriage to the petitioner as a partnership to the extent that he would take unexplained long absences from the matrimonial home thus causing anguish to the petitioner.

(d) That owing to the strain in the marriage brought about by the respondent's behavior the petitioner left the matrimonial home in 2008 but returned later on in the same (year ") in a bid to give her marriage a chance but unfortunately the respondent persisted in his lack of commitment to the marriage.

(e) That in January 2009 the respondent threw the petitioner out of the matrimonial home and despite being aware of her place of abode has not sought to be reconciled with her.

6. Because of the aforesaid desertion which the petitioner says she never condoned, the petitioner prays that the court finds that the marriage has irretrievably broken down and to decree that it be dissolved. She testified on oath that she has never filed any other proceedings in relation to the said marriage and has not colluded with the respondent in filing the present petition. In her sworn testimony, the petitioner told the court that she and the respondent had been blessed with two issues of their union, a boy and a girl now aged 6 and 5 years respectively. The two have been living with the petitioner who has taken care of all their needs without any assistance from the respondent, who has never taken the initiative to see them since the petitioner moved them away from the matrimonial home. She told the court that the respondent only visits the children at her prodding.

7. The petitioner gave an account of her attempts at reconciliation with the respondent which were thwarted by the respondent's outright indifference and disinterest. She testified that she suffered depression as a consequence of the respondent's alcoholism, absenteeism and gross irresponsibility. She sees no possibility of reconciliation. The petitioner prays that she be granted custody of the children whom she says she can take care of as she has always done.

8. I find that the particulars of desertion as presented do suffice to lead me to conclude that the marriage between the petitioner and the respondent has irretrievably broken down. I see no evidence that the petitioner has condoned the actions of the respondent. I find that the petitioner deserves the decree sought not only to restore her dignity as a human being, but also free her to pursue her life without the fear of further emotional abuse, and to give her a healthy environment in which to bring up the two children of the marriage. I am satisfied that the petitioner has proved her case to the required standards and that the same has not been presented in collision with the respondent.

9. The respondent, having been served with the petition and neglecting to file a reply thereto is deemed to have conceded the grounds advanced therein. After due consideration of the facts as stated by the petitioner both in her sworn evidence and the petition. I hereby allow the petition and decree that the petitioner's marriage to the respondent be and is hereby dissolved. Accordingly a decree nisi shall issue forthwith to become absolute at the expiry of three months.

10. The petitioner shall have custody over the issues of the marriage and the respondent shall have visitation rights, to be executed by mutual agreement between the parties. The respondent shall remain bound to his parental responsibility over the children as required under the law.

11. The prayer for costs of the petition is marked as withdrawn since the petitioner has stated that

she would not press for the same.

DATED, SIGNED and DELIVERED at NAIROBI this 20th DAY OF December, 2012.

M.G. MUGO

JUDGE

In the presence of :

Ms. Osoro holding brief for Ms. Okulo for the petitioner.



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