



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

DIVORCE CAUSE NO. 31 OF 2013

BETWEEN

C F B.....PETITIONER

AND

M O.....RESPONDENT

JUDGEMENT

1. Marriage was celebrated between the parties herein on 31st August 1996 at the City of Birkenhead, United Kingdom under the Marriage Act, 1949. The couple thereafter cohabited at Tervuren in Belgium and Nairobi in Kenya, as husband and wife. The couple was blessed with issue, two children, A C B (born 1997) and T M B (born 1999).
2. The petition in this matter was filed in court on 12th February 2012. The petitioner accuses the respondent of desertion. She is said to have constructively and literally deserted the respondent. She is said to have been physically unavailable to the petitioner and as a result there has been no conjugal connection between them for the last twelve years.
3. The petitioner seeks in the main dissolution of the marriage.
4. The petition was served on the respondent and she did file appearance through counsel on 7th March 2013. She filed an answer to the petition on 14th March 2013. She denies all the allegations made in the petition, and accuses the petitioner of having deserted the respondent by taking up employment in Geneva, Switzerland, in 2009, and he has been resident there since then, leaving the respondent in Kenya. She avers that she only left the matrimonial home in 2012 after the petitioner installed and imposed his mistress in the matrimonial home. She further accuses him of leading an adulterous life with his mistress named as K A. She also challenges the jurisdiction of the court to hear and determine the petition on grounds of residency
5. Subsequently, she amended her pleadings on 29th November 2013. In the amended pleadings she concedes the jurisdiction of the court, and cross-petitions for dissolution of the marriage, custody of the children, maintenance for herself and the children, division of the matrimonial property, and costs. She founds her claim on desertion, where she accuses the petitioner of having deserted her since 2001.
6. There is a reply and answer to the cross-petition filed on 16th December 2013. The petitioner explains that the parties had lived together with the alleged mistress, K A, since 2002, and that the alleged matrimonial property was in fact owned jointly by the three of them. He denies deserting

the family, pleading that he paid for visits to his place of work by the family. He claims for joint custody of the children, equal access to the children and pleads that the court should determine the issue of maintenance in light of both parties financial ability.

7. The respondent reacted to the answer by filing her reply to the answer to the cross-petition, dated 10th January 2014. She pleads that the petitioner abandoned the matrimonial bed in 2001 long before he went to work abroad. She concedes that he arranges holidays for the children, but counters that he interferes by inviting the mistress along.
8. On 29th May 2014 the Deputy Registrar certified that the matter proceeds for hearing as a defended cause.
9. The matter came up for hearing on 25th September 2014, when the parties recorded a consent which disposed of the issues relating to custody of and access to the children of the marriage, maintenance of both the children and the respondent, and division of matrimonial property. This left dissolution of the marriage as the only issue for determination by the court.
10. On the remaining issue only the respondent testified giving vent to the allegations made in her answer to the petition and cross-petition. She was not cross-examined by counsel for the petitioner. As the petitioner did not testify, the respondent's testimony went unchallenged. I am therefore satisfied that the petitioner deserted the respondent .
11. It would appear to me that the marriage between the parties herein has irretrievably broken down; the parties have been living separately for a long time. I am also conscious of the evidence that they have not had conjugal connection for over ten years. Both concede in their pleadings that the marriage is at an end.
12. It would also appear to me that there has been no collusion between the parties in the bringing of these proceedings. I am also satisfied that the respondent did not condone the matrimonial offence of desertion.
13. I am disposed in the circumstances of the above to make the following orders:-
 - a. That I hereby dissolve the marriage celebrated between the petitioner and respondent on 31st August 1996;
 - b. That decree *nisi* shall issue forthwith, to be made absolute after thirty (30) days;
 - c. That the consent orders recorded on 25th September 2014 shall govern matters touching on the custody of and access to the children of the marriage, the maintenance of the children and the respondent, and division of matrimonial property
 - d. That the respondent shall have the costs of the suit.

DATED, SIGNED and DELIVERED at NAIROBI this 19th DAY OF December 2014.

W MUSYOKA

JUDGE