



**IN THE HIGH COURT OF MALAWI
LILONGWE REGISTRY
MATRIMONIAL CAUSE NO. 12 OF 2007**

BETWEEN

SERAPHIN KANA KHONJE PETITIONER

AND

ODETTE MUTETERI KHONJE RESPONDENT

CORAM : HON. JUSTICE NYIRENDA

: M. NKhono, Counsel for the Petitioner

: The Respondent, Absent and Unrepresented

JUDGMENT

By this petition the Petitioner, Seraphin Kana Khonje, seeks dissolution of his marriage to the Respondent Odette Khonje, nee Odette Muteteri, on the ground of desertion. As I proceed to determine the matter I consciously draw my attention to a couple of safeguards upon which I must be satisfied.

I must at the outset be satisfied as to my jurisdiction to determine the matter. This marriage was celebrated in Kenya and therefore it is a foreign marriage. What is on record however is that the Petitioner is a Malawian national and is domiciled in Malawi. On that basis I am satisfied that I have jurisdiction to preside over this matter.

The case is undefended. I must warn myself against the danger of collusion for that reason. Having heard the Petitioner, it is the finding of this court that these proceedings are not brought as a result of collusion between the parties. The final area for caution is whether there has been any proceedings for any purpose with regard to the marriage. Again I am satisfied that there has been no previous proceedings in relation to the marriage. In the premise of all these considerations I will now move on to consider the matter on merits.

As I observed earlier the matter is undefended. There is evidence before this court that the Respondent was served with all the relevant process. She has not responded to any of them. Her absence at this hearing despite due notice is therefore not surprising to this court.

Exhibited in court is a marriage certificate evidencing the celebration of the marriage in Kenya on 16th February 1991. In court the Petitioner testified that subsequent to celebration of the marriage the couple cohabited at divers places and partly resided in Kenya, Germany and finally came to settle at home in

Malawi. As a result of such cohabitation there are two issues namely Topaz Kana Khonje (male) and Mishka Kana Khonje (female).

The brief facts leading to this petition are that in September 2001 the couple decided to come and settle home in Malawi from abroad which they in fact did. It was not for long though because in December that same year the Respondent went back to Nairobi, Kenya, and never to come back to Malawi. From Kenya the Respondent moved to Canada where she has remained to date. In the meantime the Petitioner has made relentless effort to persuade the Respondent to return to Malawi so that they could reunite as a family. She has refused to return to Malawi. On some occasions the Petitioner has actually gone to Canada to talk to the Respondent into coming back home. Even that has not worked. It is now clear to the Petitioner that the Respondent is resolute in staying in Canada and has no intention of re-uniting with the Petitioner.

Section 5(b) of the Divorce Act provides:

“A petition for divorce may be presented to the court either by the husband or the wife on the ground that the respondent ----

- (i) Has deserted the petitioner without cause for a period of at least three years immediately preceding the presentation of the petition”.*

The facts of the present case clearly speak for desertion. Evidently the Respondent has deserted the matrimony for a period of over six years. It is further evident that the desertion is without cause. There is no suggestion of constructive desertion. To the contrary the Petitioner has made all the effort any reasonable and loving husband could be expected to make to bring back his wife to the matrimonial home.

I am more than satisfied that the Respondent is in desertion and sufficiently long upon which this Court should dissolve the marriage. Accordingly the Petition succeeds. The marriage between the Petitioner and the Respondent is dissolved on the ground of desertion and I further proceed to grant a *DECREE NISI of divorce*.

The Petitioner does not seek any other remedy. Even the question of costs has been left to each party. I therefore do not make any other Order.

PRONOUNCED in Open Court at Lilongwe this 27th day of March 2008.

A.K.C. Nyirenda
J U D G E