



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

FAMILY DIVISION

DIVORCE CAUSE NO. 82 OF 2015

IN THE MATTER OF THE MARRIAGE ACT 2014 OF THE LAWS OF KENYA

PM.....PETITIONER

VERSUS

CE.....RESPONDENT

JUDGMENT

1. The Petitioner herein PMN petitioned this Court for orders that the marriage between her and the Respondent KCE be nullified and/or dissolved on the grounds of cruelty and desertion.
2. The Petitioner and Respondent got married on 21st June 2013 at the Civil Registry in Nairobi.
3. The Marriage was never consummated as the Respondent left immediately after the Celebration of the marriage.
4. The Respondent was subsequently deported by the Government of Kenya and the Petitioner does not know his whereabouts.
5. The Respondent is not a Kenyan Citizen and he was unlawfully living in Kenya at the time he fraudulently entered into the marriage with the Petitioner.
6. The petition proceeded as an undefended suit. The Petitioner who testified as Pw 1 said the Respondent was a friend to her friend when she first met him.
7. She said he convinced her to enter into the marriage to enable him get work permit in Kenya. He left immediately after the celebration of the marriage and she later learnt he had been repatriated.
8. Section 73 (1) states as follows;

“ A Party to a marriage may petition the Court to annul the Marriage on the ground that:-

(a) the Marriage has not been consummated since its celebration.

(b) thePetitioner’s Consent was not freely given.
9. I find that in the current case, the Petitioner did not freely enter into the marriage with the Respondent as the said wanted to use the marriage to obtain a work permit.
10. The Petitioner also said the Marriage was not consummated as the Respondent left immediately after the marriage was celebrated and she has never seen him since that time.
11. Although the Petition was not filed within one year of the Celebration of the marriage as required by Section 73 (2) (a) of the Marriage Act, I find that the marriage has not been consummated since it was celebrated and since this Petition was filed in Court.
12. I accordingly allow the Petition and order as follows;

(a) THAT the marriage between the Petitioner and the Respondent be and is hereby nullified.

(b) THAT a decree absolute to issue accordingly.

(c) THAT each party to bear its own costs of this suit.

DELIVERED, SIGNED AND DATED IN OPEN COURT THIS 25TH DAY OF JANUARY, 2019

ASENATH ONGERI

JUDGE OF THE HIGH COURT OF KENYA, NAIROBI