



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MALINDI**

**ANNULMENT CAUSE NO. 9 OF 2017**

**D F ..... PETITIONER**

**VERSUS**

**P B S ..... RESPONDENT**

**JUDGEMENT**

1. D F seeks annulment of his marriage to P B S. The marriage was solemnized on 21<sup>st</sup> October, 2016 at the office of the Registrar of Marriages in Malindi. The reason for seeking annulment of the marriage is non-consummation of the same as particularized in the petition. The petition did not receive an answer from the Respondent.

2. In his testimony, the Petitioner adopted his written statement filed on 14<sup>th</sup> May, 2018. In brief his averment was that immediately after the celebration of the marriage a row erupted between him and the Respondent which led to physical confrontation. As a result he was forced to stay away and keep distance from the Respondent. Further, that as a result of the altercation on the first night of their marriage, differences arose between them leading to the non-consummation of their marriage. He thus urged this court to annul their marriage.

3. The Petitioner's evidence was not tested by way of cross-examination. His evidence is that the marriage was not consummated. The evidence remains unchallenged.

4. Section 73 of the Marriage Act, 2014 provides, *inter alia*:

**“73(1) 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;**

**....**

**(2) The court shall only grant a decree of annulment if –**

**a) The petition is made within one year of the celebration of the marriage;**

**b) ....**

**c) the marriage has not been consummated since the petition was made to the court.”**

5. Section 74 of the same Act goes ahead to provide that:

**“74(1) A petition for annulment may be presented only by one of the parties.**

**(2) Where a petitioner alleges facts of which only one party was ignorant at the date of the marriage, it may be presented only by that party.**

**(3) Where a petitioner alleges the wilful refusal of one party to consummate the marriage it may not be presented by the party against whom the allegation is made.”**

6. The marriage was celebrated on 21<sup>st</sup> October, 2016 and this petition was filed on 28<sup>th</sup> September, 2017. It was thus filed within one year from the date of celebration of the marriage as required by the law.

7. The testimony placed before the court shows that the marriage was never consummated. The petition for annulment also meets the other requirements of the law outlined above.

8. In the circumstances I allow the petition and a decree of annulment shall issue accordingly. It is thus deemed that the Petitioner and the Respondent were never married. As the petition was not opposed, there is no order as to costs.

**Dated, signed and delivered at Malindi this 26<sup>th</sup> day of July, 2018.**

**W. KORIR,**

**JUDGE OF THE HIGH COURT**