



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT MALINDI

MISC. CIVIL APPLICATION NO. 18 OF 2017

ARAMINI DANIELLE.....APPLICANT

VERSUS

WARDA ALI SALIM.....RESPONDENT

RULING

(Notice of Motion Application Dated 28th March, 2017)

1. Through the Notice of Motion dated 28th March, 2017 the Applicant Aramini Danielle seeks orders as follows: -

- “1. 1. THAT the Hon. Court be pleased to issue a decree nisi.**
- 2. THAT upon expiry of six months the court to issue a decree absolute.**
- 3. THAT costs be in the cause.”**

2. Warda Ali Salim who is named as the Respondent did not file a response to the application.

3. The application before the Court is said to be brought under Section 15(1) of the Matrimonial Causes Act, Section 3A of the Civil Procedure Act and all other enabling provisions of the law.

4. Briefly, the Applicant who was the Respondent in the Principal Kadhi’s Court at Malindi in KCDC No. 2 of 2017 entered consent with the Respondent who was the Petitioner in the Divorce Cause in which they agreed to dissolve their marriage. An order was issued accordingly.

5. However, it is the Applicant’s case that attempts to conduct his business and process his matters in the Immigration Department and the Italian Consular have been unsuccessfully as the authorities insist that they require a decree *nisi*. The Applicant thus seeks the orders as per his application.

6. Section 3A of the Civil Procedure Act, Cap. 21 provides that: -

“Nothing in this Act shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.”

7. In the case of **Chatur Radio Service v Pronogram Limited [1994] eKLR** the Court of Appeal stated that: -

“The inherent jurisdiction of the court could not properly be invoked since it is trite and settled law that where there exists a statutory procedure, like in this case, the inherent jurisdiction of the court cannot properly be invoked to circumvent the statutory procedural provision.”

8. This is not therefore a matter in which the Applicant can benefit from invoking the Court’s inherent power. The Applicant appears to be aware of this fact for he has indeed cited another provision of the law in support of the application. Unfortunately the law (the Matrimonial Causes Act, Cap. 152) cited by the Applicant was repealed by the Marriage Act, 2014 which came into force on 20th May, 2014. In the circumstances, the orders which the Applicant seeks are currently unknown in law as they were consigned to oblivion upon the repeal of the Matrimonial Causes Act. Maybe what the Applicant seeks can be found in the Marriage Act, 2014. He has however not identified any other provision of the law in support of his application.

9. It is also important to note that the case proceeded before the Kadhi’s Court. No explanation has been given as to why the Applicant has not gone back to the Kadhi’s Court for clarification of the orders issued. The Applicant has not demonstrated why the orders issued by a competent court need the validation of another court. If such is the requirement of the law, then the specific provision of the law should be cited. This has not been done in the instant matter.

10. The net result is that the application before this Court has no merit. The application is dismissed. As the matter was not defended, there will be no orders as to costs.

Dated, signed and delivered at Malindi this 26th day of April, 2017.

W. KORIR,

JUDGE OF THE HIGH COURT