

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

DIVORCE CAUSE NO. 60 OF 2013

BETWEEN

S S L.....PETITIONER

AND

S K BRESPONDENT

RULING

1. The Petitioner S S L filed a petition dated 22nd March, 2013 seeking the dissolution of the marriage celebrated between him and the Respondent, on 21st December 2008 at the Siri Gurdwara Ramgarhia Railway Temple, Nairobi. Upon being served the Respondent, brought a Notice of Preliminary Objection dated 13th May 2013 in which she seeks to have the Petition dated 22nd March 2013 struck out for offending the **Matrimonial Causes Rules**.
2. The Preliminary Objection is predicated on grounds that **Rules 4(1) (b) and (d) and Rules 6(1) and (2)** have not been complied with. The Respondent states that there was no principal permanent address where the parties cohabited within Kenya provided and the occupation of the Petitioner/husband has not been stated. Further, that the Petitioner's verifying affidavit makes no statement in respect of verifying the facts of which the deponent has personal support, or cognizance and deposing as to belief in the truth of the other facts alleged in the petition. Lastly, that the affidavit fails to state that since the ground of divorce is cruelty amongst others, he has not in any manner condoned the cruelty.
3. Under **Rules 4(1) (b) and (d)** of the **Matrimonial Causes Rules** the petition in a matrimonial cause shall state the principal permanent addresses where the parties have cohabited within Kenya or, if it is the case, that there has been no address of cohabitation within Kenya. The Petition shall further state the occupation of the husband and the residence and domicile of the parties to the marriage at the date of the institution of the cause.
4. **Rule 6 (2)** of the same Rules requires that there should be filed with every petition an affidavit by the petitioner, verifying the facts of which the deponent has personal cognizance and deposing as to belief in the truth of the other facts alleged in the petition and, except in the case of a petition for restitution of conjugal rights, stating whether the petition is presented or prosecuted in collusion with the respondent or any of the co-respondents.
5. In particular **Rule 6(2) (a)** requires the affidavit to also state, in the case of every petition for divorce or judicial separation, where the ground of the petition is adultery, whether the petitioner has in any manner been accessory to or connived at or condoned the adultery, and, where the ground of the petition is cruelty, whether the petitioner has in any manner condoned the cruelty.
6. Mr. Desai is therefore correct in raising this Preliminary objection. I find however that the failure on the part of the Petitioner to comply with the foregoing provision is curable by amending the petition to provide the missing information and by the filing of a supplementary affidavit rather than striking out the petition. In so holding I am guided by the principles in **Article 159(2) (b)** and

(d) of the **Constitution** which enjoin the court to administer justice to all without delay and without undue regard to procedural technicalities.

7. The Preliminary Objection is therefore upheld, with orders that the Petition be amended appropriately and that a supplementary affidavit be filed to bring the pleadings in conformity with the law.

SIGNED DATED and **DELIVERED** in open court this **28th** day of **July 2016**

L. A. ACHODE

JUDGE

In the presence ofAdvocate for the Petitioner

In the presence ofAdvocate for the Respondent