

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
FAMILY DIVISION
DIVORCE CAUSE NO. 1 OF 2016

R S M.....PETITIONER

A R M.....RESPONDENT

JUDGMENT

1. The petitioner is a Kenyan national and the respondent is an Indian national. They got married on 21st September 2012 in India and came to settle in their matrimonial home at Flat No. *[particulars withheld]*, Westlands in Nairobi. They lived together for one year until about July/August 2013 when the respondent left the marriage and returned to India where she presently lives. The petitioner went to India to try and get her to return but she refused. Since then, they do not communicate. He stated that as far as he is concerned the marriage has broken down beyond repair.

2. The respondent filed a reply to the petition whose paragraph 8(c) stated as follows:-

“8(c) With reference to paragraph 8c it is true the differences have occurred between us which are now irretrievable for reconciliation. I am also not interested to stay with him as his wife and am willingly giving my consent for the NULL & VOID declaration as stated in the prayer clause of the petition.”

3. The petitioner adopted the petition and supporting affidavit as his evidence. In paragraphs 7 and 8 of the petition and paragraph 2 of the supporting affidavit he stated that the marriage was not consummated owing to refusal by the respondent.

4. The respondent did not attend the court to testify. There was no evidence to controvert what was stated by the petitioner. I accept the petitioner’s evidence, and find that the marriage was broken down and cannot be repaired. But more important, the marriage was not consummated. I, consequently, declare it null and void. The petitioner did not ask for costs.

SIGNED at NAIROBI this 14th day of NOVEMBER 2016.

A.O. MUCHELULE

JUDGE

DATED and DELIVERED at NAIROBI this 17th NOVEMBER 2016.

R.E. OUGO

JUDGE