

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

DIVORCE CAUSE NO.202 OF 2013

T G M.....PETITIONER

VERSUS

S B M.....RESPONDENT

JUDGMENT

1. The Petitioner and the Respondent cohabited together as husband and wife from September 2005 and solemnized their marriage under the Marriage Act at the Kajiado District Commissioner's office on 16th December 2010. The petitioner and respondent after the said marriage cohabited at the said places Villa Franca in Nairobi, and Kitengela in March 2006. The marriage between the petitioner and the Respondent has been blessed with two issues namely B M born on 6th October 2005 and K M born on 22nd January 2010. The petitioner avers that at the time of the alleged marriage the respondent did not disclose that he was married to F K and M N under customary law and only became aware of the same in 2012.
2. She seeks the marriage to be nullified and seeks legal custody and care of the issues of the marriage B M and K M.
3. The respondent despite being served with the said petition did not file a reply. The application was not opposed and the registrar on 18th September 2014 issued a certificate that the same proceed as undefended.
4. The matter came for hearing on 29th January 2015. The petitioner testified that she cohabited with the respondent in September 2005 and later solemnized the marriage on 16th December 2010 and they were blessed with two boys. It was her testimony that they stop living together after 2011. She stated that on asking him about his two wives he denied it. The petitioner denied knowing of the other wives before solemnizing their marriage. She testified that he refused her to visit his home and that his people had visited her parents though no dowry was paid; that F K and M had 2 and 1 child respectively with the respondent and were living in Meru.
5. She testified that had she known of the other women she would not have solemnized the marriage; that he has not seen the children and was not supporting them since 2011 and had already sought custody of the children.
6. It is evident that the marriage between the petitioner and the respondent has irretrievably broken down with no possibility of reconciliation. The petitioner's evidence was not challenged. The petitioner and the respondent have not been living together from 2011. Section 16 of the Matrimonial Causes Act (now repealed) outlines grounds of divorce. One of the grounds is living with other former wives/husbands. Section 16 of the Matrimonial Causes Act Cap. 152 provide that“(1) *The following are the grounds on which a decree of nullity of marriage may be made—*
.....
(d) that the former husband or wife of either party was living at the time of the marriage, and the marriage with such previous husband or wife was then in force;”
7. The petitioner's evidence has not been controverted. I therefore annul the marriage between the petitioner and the respondent that was celebrated at the Kajiado District Commissioner's Office on

the 16th December 2010. I however decline to deal with the issue of custody of the children as the petitioner in her testimony stated that she had sought custody of the same from the children's court. I make no order as to cost. A decree nisi to issue and to be made absolute within 30 days. It is so ordered.

Signed, dated and delivered this **20th** Day of **February** 2015.

R. E. OUGO

JUDGE

In the presence of:

.....**Petitioner**

.....**Respondent**

Mr. Makori **Court Clerk.**