

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

DIVORCE CAUSE NO. 88 OF 2014

M MPETITIONER

-VERSUS-

N MRESPONDENT

RULING

1. The respondent has raised a preliminary objection to the petition herein dated 22nd April 2014. The objection is stated in a notice dated 24th February 2015. It is argued that the issues raised in the instant cause are also the subject matter in another cause in Italy, being R.G.A.C. 919 of 2013 at the High Courts of Sulmona, which was instituted by the respondent herein in May 2013. It is averred that the current suit is therefore *sub judice*. It is also argued that the instant cause is bad in law and is an abuse of the court process and the same should be struck out.

2. When the cause came up for full hearing on 16th April 2015, I directed that the preliminary objection be disposed of first.

3. Counsel for the respondent cited the provisions of section 6 of the Civil Procedure Act, **Cap. 21, Laws of Kenya**, which say **that:**

“No court shall proceed with the trial of any suit or proceeding in which the matter in issue is also directly and substantially in issue in a previously instituted suit or proceeding between the same parties, or between parties under whom they or any of them claim, litigating under the same title, where such suit or proceeding is pending in the same or any other court having jurisdiction in Kenya to grant the relief claimed.”

4. She contended that the issues in dispute in this cause are materially the same as those in the cause before the Sulmona court **in Italy**.

5. On his part, counsel for the petitioner argued that the proceedings in Italy were different from the instant proceedings to the extent that what was sought from the Sulmona court was judicial separation, and not divorce. He stated that the alleged matrimonial offences that gave rise to the cause were committed in Kenya, and the Kenyan courts should therefore have the jurisdiction to deal with the matter.

6. Section 6 specifically addresses proceedings pending before courts in Kenya, it does not deal with proceedings that may be pending elsewhere. The proceedings referred to by the respondent are in a foreign jurisdiction, and therefore section 6 does not apply in the circumstances. The fact that there is a suit pending in the foreign jurisdiction named raising materially the same issues as the instant cause is therefore not a bar to this court to hearing and determining the present matter.

7. The explanation note to Section 6 of the Civil Procedure Act states as follows:

“The pendency of a suit in a foreign court shall not preclude a court from trying a suit in which the same matters or any of them are in issue in such suit in such foreign court.”

8. In view of everything stated above, the objection raised cannot possibly have any merit. It is accordingly hereby overruled. The petition herein should proceed to full trial.

DATED, SIGNED and DELIVERED at NAIROBI this 25TH DAY OF SEPTEMBER, 2015.

W. MUSYOKA

JUDGE