



**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 B .....RESPONDENT

**RULING**

1. The Notice of Motion before me is dated 24<sup>th</sup> February 2015. It is brought under **Sections 1 A & 1 B, 3, 3A, 63(e), 80, 99 and 100** of the **Civil Procedure Act, Order 22 Rule 22(1), Order 45 rule 1 and Order 51 Rule 1** of the **Civil Procedure Rules 2010**. It seeks for orders that:
  - a. The execution and enforcement of and all further proceedings in relation to the judgment and Decree delivered and given herein on 30<sup>th</sup> January 2015 including without limitation the issuance of a Decree Absolute be stayed until this application is heard and determined;
  - b. The judgement and Decree delivered and given in this matter on 30<sup>th</sup> January 2015 by this court be reviewed and set aside;
  - c. The court proceeds to hear and determine the Respondent's Preliminary Objections set out in the Notice of Preliminary Objection dated 13<sup>th</sup> May 2013 and filed herein on 14<sup>th</sup> May 2013.
2. The application is based on grounds that the Applicant/Respondent filed a Notice of Preliminary Objection dated 13<sup>th</sup> May 2013 setting out various objections to the Petition dated 22<sup>nd</sup> March 2013 and seeking to have the said Petition struck out with costs. Both counsels filed written submissions dated 26<sup>th</sup> September 2014 and 6<sup>th</sup> November 2014 respectfully. on 27<sup>th</sup> November 2014 the court confirmed receipt of submission to the parties and a ruling on the said Preliminary Objection was scheduled for 30<sup>th</sup> January 2015 that what was before the court for ruling was the Respondent's Preliminary Objections and not the main Petition for Divorce whose pleadings had not been settled nor a Registrar's Certificate issued nor had any hearing or trial been conducted.
3. That on 30<sup>th</sup> January 2015, the court delivered a judgment on the Petition granting the Divorce and issuing a Decree Nisi which it directed would be made absolute within 30 days, which would be 2<sup>nd</sup> March 2015. That the said judgment is clearly an error apparent on the face of the record for reasons that what was before the court for ruling was the Respondent's Preliminary Objection and not the main Divorce cause.

4. The Applicant/Respondent in supporting affidavit dated the same day reiterated what he stated in the Notice of motion dated 24<sup>th</sup> February 2015. He stated that it would be in the interest of justice that the judgment given in error on 30<sup>th</sup> January 2015 be reviewed and set aside and that thereafter the Respondent's said Preliminary Objection be heard and determined.
5. The Respondent/Petitioner in her replying affidavit dated 29<sup>th</sup> April 2015 deponed that in the ruling delivered on 30<sup>th</sup> January, 2015 the court ordered that upon appreciating the proceedings before it, it was clear that the marriage between the parties had broken down irretrievably with no chance of reconciliation and the court in the circumstances proceeded to issue a Decree Nisi which was to be made absolute within 30 days thereof. That it is true that the marriage between her and the Respondent has irretrievably broken down and there is absolutely no need to review the ruling as the court proceeded to issue a decree Nisi after appreciating her petition and the Respondent's cross petition.
6. The Respondent/Petitioner further averred that there will be no value added to the revising of the Applicant/Respondent's Preliminary Objection. That it would be in the interest of justice that the Applicant/Respondent's application is struck out with costs as it amounts to an abuse of the court process.
7. I have perused the submissions of the parties herein and note that the said judgment is clearly an error apparent on the face of the record for reasons that what was before the court for ruling was the Respondent's Preliminary Objection and not the main Divorce cause. In the premise I find that the application dated 24<sup>th</sup> February 2015 has merit and is therefore granted. The execution and all further proceedings in respect of the judgment including the decree nisi which was issued are hereby set aside.

Costs to be in the cause.

**SIGNED DATED and DELIVERED in open court this 12<sup>th</sup> day of November 2015.**

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**L. A. ACHODE**

**JUDGE**