

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

DIVORCE CAUSE NO. 201 OF 2001

BETWEEN

J N C.....PETITIONER

AND

W C G.....RESPONDENT

M.....CO-RESPONDENT

RULING

1. This matter was cleared for hearing by the Deputy Registrar on 23rd October 2009, and was certified to proceed as a defended cause.
2. On 22nd October 2010, the matter was mentioned before Dulu J for directions, at the request of the petitioner, with respect to the mode of evidence to be given for the purposes of the matter given that the petitioner worked in Zambia. It was directed that the parties do file affidavits from prospective witnesses. Further directions were given on 4th February 2010 with respect to the filing of affidavits and written submissions. On 14th July 2011, directions were given by Karanja J, following consent of the parties, that the divorce proceedings be disposed of by way of written submissions, judgement was to follow. On 28th December 2011, Karanja J directed that as Her Ladyship had been appointed to the Court of Appeal and was not able to prepare the judgement for delivery, the matter be placed before the Presiding Judge of the Family Division for another date to be fixed for judgement to be given before any other judge. The matter was placed before GBM Kariuki J on 21st March 2012, who sent it back to Karanja J. for judgement. On 17th July 2012 the matter was sent back to GBM Kariuki J who after perusing the submissions fixed the matter for judgement on 31st July 2012. The matter was placed before me on 30th July 2013 for mention at the request of the parties to confirm whether judgement was ready. As the judgement had not been prepared, I fixed the matter for judgement on 15th August 2013.
3. I have had occasion to peruse through the file. I have noted that the matter herein was not heard. No oral evidence was recorded from the parties. Instead what I have on record are affidavits and written submissions. It is my considered view that the matter is not ripe for judgement. The procedure for hearing in divorce matters has not changed. The disposal of a divorce matter is by way of oral evidence, not affidavits and written submissions. I must state that it is only interlocutory applications that are to be determined on the basis of affidavits and written submissions. Orders that finally determine a matter cannot be made on the basis of affidavits and written submissions alone, except in cases where the law allows summary procedure.
4. In view of what I have stated above, I will not prepare judgement in this matter at this stage, I will instead direct the parties to fix the matter for hearing whereat the parties shall give oral evidence to advance their various positions.
5. It is so ordered.

DATED, SIGNED and DELIVERED at NAIROBI this 31st DAY OF January, 2014.

W. MUSYOKA

JUDGE