

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

DIVORCE CAUSE NO. 221 OF 2012

L W K.....PETITIONER

VERSUS

G K.....RESPONDENT

J U D G M E N T

The Petitioner and the Respondent were on 26th June 2001 married at the Registrar's Office in Nairobi. The marriage was celebrated under the **Marriage Act**. Prior to the said marriage the Petitioner had a child from a previous relationship. According to the Petitioner, since the celebration of the said marriage, the marriage has not been consummated. The Petitioner states that the Respondent traveled to the United States of America shortly after marriage and had not returned since. She averred that she has not lived with the Respondent since the celebration of the marriage. The Petitioner states that she has moved on and has children from another relationship. In the premises therefore, the Petitioner prays that the marriage be dissolved.

The Respondent was served with a copy of the petition for divorce together with notice requiring him to enter appearance. He did not enter appearance. Neither did he file an answer to the petition. The Deputy Registrar of this court issued a certificate certifying that this was a suitable cause to be disposed of as an undefended divorce cause. At the hearing of the petition, this court heard oral evidence adduced by the Petitioner. The Petitioner reiterated the contents of her petition for divorce. She told the court that the marriage was not consummated because the Respondent relocated to the United States of America shortly after the celebration of the marriage. He had not returned since. This court has carefully considered the grounds put forward by the Petitioner in support of her petition for divorce. That ground is of nullity. This court holds that the Petitioner did indeed prove to the required standard of proof on a balance of probabilities that indeed her marriage to the Respondent should be declared a nullity and be dissolved by reason of non-consummation of the marriage. The Petitioner and the Respondent have not related as husband and wife for a period of more than ten (10) years.

In the premises therefore, the marriage celebrated between the Petitioner and the Respondent on 26th June 2001 at the Registrar's Office in Nairobi is hereby annulled. It is dissolved. Decree nisi is hereby issued. It shall be made absolute within thirty (30) days of the date of delivery of this judgment. There shall be no orders as to costs.

DATED AT NAIROBI THIS 28TH DAY OF MARCH, 2014

L. KIMARU

JUDGE