

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

DIVORCE CAUSE NO. 146 OF 2010

BETWEEN

B W M.....PETITIONER

AND

I M E..... RESPONDENT

JUDGEMENT

1. Marriage was celebrated between the parties herein on 29th March 2006 at the office of the Registrar of Marriages, Nairobi, under the Marriage Act, Cap. 150, Laws of Kenya. The marriage certificate issued serial number *[particulars withheld]* is attached to the petition. The couple did not live as husband and wife after the celebration on the marriage. There are no issues of the marriage.
2. The petition in this matter was filed in court on 9th November 2010. The petitioner accuses the respondent of desertion and cruelty. The particulars are that the respondent barred the petitioner from moving into the matrimonial home for unknown reasons, he frequently threatens the petitioner and has denied her conjugal rights. She avers that as a result she was forced to leave for the United States of America to be with her father.
3. The petition was served on the respondent on 10th June 2011, as evidenced by the affidavit of service sworn on 13th June 2011 by Nelson Saina. He did not enter appearance nor file an answer to the petition and a cross-petition. The registrar cleared the matter 13th October 2011 to proceed for hearing as an undefended cause.
4. The matter came for hearing on 3rd April 2014. The petitioner testified and gave vent to the allegations made in her pleadings. She stated that the differences between them arose from the very night of the wedding, and as a consequence the marriage was never consummated. Since there was no answer to her petition or a cross-petition, the allegations made in her petition were unchallenged and so was her oral evidence.
5. From the material before me, by way of pleadings and the oral evidence recorded at the trial, it is clear to me that there never was a marriage between the parties as after the ceremony at the office of the Registrar of Marriage on 29th October 2006, the parties never got to consummate it.
6. The orders that I am disposed to make are as follows:-
 - a. I hereby nullify the marriage celebrated between the petitioner and respondent on 29th March 2006;
 - b. Decree *nisi* shall issue forthwith, and may be made absolute after thirty (30) days;
 - c. There will be no orders as to costs.

SIGNED DATED and DELIVERED in open court this 30th day of May 2014.

W. MUSYOKA

JUDGE

In the presence of Mr. Maani for Mr. Mungi advocate for the petitioner.