



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT KISII**  
**DIVORCE CAUSE NO.3 OF 2013**

**E M O ..... PETITIONER**

**AND**

**P N O ..... RESPONDENT**

**JUDGMENT**

1. The petition herein is the one dated 22<sup>nd</sup> day of January 2013 in which E M O the petitioner is asking this court to dissolve the marriage between her and P N O the Respondent herein. She has listed two grounds and/or particulars of nullity being:-

1. *That both the petitioner and the respondent are within the prohibited degree of consanguinity or affinity;*
2. *That the marriage had not been consummated owing to ground (i) above.*

2. The petition and the verifying affidavit were duly served upon the Respondent but the same did not attract any answer and consequently this court entered interlocutory judgment against the respondent upon request by M/s Momanyi Aunga & Co. Advocates for the petitioner. The matter was then fixed for formal proof. The Deputy Registrar issued a **CERTIFICATE** as per the provisions of **Rule 30 (2) of Cap 152 Laws of Kenya** on the 6<sup>th</sup> May 2013 after hearing the application brought by way of originating summons Ex-parte by the firm of Momanyi Aunga & Co. Advocates dated 12<sup>th</sup> April 2013.

3. On the 10<sup>th</sup> March 2014 the matter came up for formal proof as directed. E M O (PW1), the petitioner having been duly sworn told the court that she is the petitioner in this case. In 2005 she was staying in Kisii Township but currently she is staying in Kibera Estate in Nairobi where she engages in the business of selling clothing materials. That in 2005 while she was staying at Mwembe, in Kisii town, she met P N O the Respondent in this case.

4. Thereafter they got married as per the marriage certificate No.[Particulars Withheld] dated 17<sup>th</sup> May 2006 same produced as **P. Exhibit I**. She also stated that both parents from her (petitioners) side and respondent's side attended the marriage ceremony but during celebrations at the reception their parents realized that the Respondent and Petitioner were very close relatives and told the petitioner and the respondent that the marriage could not be consummated. The Respondent went to his home with his parents and the petitioner also went home with her parents.

5. She testified further that to date the marriage has not been consummated. Concerning their relationship she told the court that their parents told them that her auntie was married to the respondent's family and therefore the respondent was her cousin. She now prays that this court declares the marriage null and void *ab initio* as they cannot legally marry each other either customarily or in any other way.

She is not seeking costs of this petition.

6. After carefully considering the evidence of the petitioner the following issues arise for this court's determination:-

- i. *Whether the petitioner and the respondent are within the prohibited degree of consanguinity or affinity;*
- ii. *Whether or not the marriage had been consummated;*
- iii. *Whether or not the petitioner herein is entitled to the orders prayed for in the petition.*

7. To begin with this dispute is in respect of a marriage registered under the **Marriage Act Cap 150** of the **Laws of Kenya**.

8. It would appear to me that the petitioner and respondents herein are within the prohibited degree of consanguinity/affinity and that even after the marriage ceremony, the marriage has not been consummated. The petitioner is therefore entitled to the orders prayed herein, in the absence of evidence to the contrary.

9. I hereby dissolve the marriage celebrated between the petitioner and respondent on 17<sup>th</sup> May 2006. Decree Nisi shall issue forthwith and shall be made absolute after thirty (30) days. There shall be no orders as to costs.

**Dated and delivered at Kisii this 30<sup>th</sup> day of May, 2014**

**R.N. SITATI**

**JUDGE**

In the presence of:-

Mr. Momanyi Aunga (present) for Petitioner

N/A for Respondent

Mr. Edwin Mongare - Court Clerk