

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

DIVORCE CAUSE NO. 63 OF 2012

S M W.....PETITIONER

VERSUS

T K M *alias* T K S.....RESPONDENT

RULING

The respondent herein has filed the Notice of Motion dated 18th April, 2013 seeking leave to amend her Answer to Petition and Cross-Petition dated 18th February, 2013. As a general rule a party ought to be granted freedom to amend their pleadings where to do so would cause no prejudice to the opposite party and where the amendments are necessary to achieve a just determination of the real issue in question. High Court Divorce Cause No. 38 of 2012 is a petition for divorce. The issue at hand is whether or not sufficient grounds exist to grant the divorce. I have perused the annexure which indicates the proposed amendments to the Answer and Cross-petition. In my opinion the proposed amendments do not serve to assist the court to determine the real issues arising in the petition. The Answer to Petition and Cross-Petition ought to limit itself to the petition for divorce. The proposed amendments include a prayer for division of Matrimonial Property which ought not be determined **together with** the divorce petition. The proposed amendments in my view serve only to complicate matters are not necessary for the just determination of the divorce and bring in matters extraneous. I note that there exists High Court Commercial Cause No. 38/2013 (now MW5/2014) which involves the very same parties. This latter cause is the proper forum at which any issues of acquisition of matrimonial property as well as division of the same should be properly canvassed. It is for this reason alone that I decline to allow this motion to amend the Answer to Petition and Cross-Petition. The proposed amendments can be included in the applicant's pleadings in MW5/2014 (even by way of an application to make any necessary amendments to those pleadings). The notice of motion dated 18th April, 2013 is hereby disallowed with costs to the respondent.

Dated and delivered in Mombasa this 25th day of June, 2014.

M. ODERO

JUDGE

In the presence of:

Ms. Osino for Petitioner

Ms. Mwai h/b Mr. Mutisya for Respondent

Court Clerk Mutisya