

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
DIVORCE CAUSE NO. 2 OF 2013

H-P C S.....PETITIONER

VERSUS

M NA A.....RESPONDENT

RULING

1. The application for determination is the summons dated 16th May 2014 taken out under Rule 25 of the Matrimonial Causes Act. It is founded on the affidavit of counsel for the applicant sworn on 16th May 2013 and that of the applicant sworn on 31st January 2014.
2. The applicant would like his petition for divorce dated 7th January 2013 determined on the basis of affidavit evidence on the grounds that he suffers from various medical complications and his doctors have advised him against long distance travel. He has attached to his affidavit a letter dated 18th February 2013 by Dr. Pillar of the Jenner Practice, which confirms that he suffers from several medical problems, and advises that he should not travel long distances.
3. The petition on record was served on the respondent. There is an affidavit of service on record to evidence service. The respondent did not appear nor file answer to the petition. On 25th April 2013, the Deputy Registrar certified the cause as undefended.
4. As a matter of cause, petitions in divorce causes are to be disposed of by oral evidence. By their very character the allegations made in pleadings filed in divorce matters are provable by way of the parties attending court and making statements orally on oath to give vent or breathe life to their allegations. A petition is not in the nature of an application, and it ideally ought not be disposed of without a formal appearance by the party or parties in court.
5. The application is premised on Rule 25 of the Matrimonial Causes Act. It must be stated from the outset that there is no Rule 25 of the said Act, but there is a **Section 25** of the said Act which provides for alimony. I suppose that the applicant is referring to Rule 25 of the Matrimonial Causes Rules.
6. Rule 25 of the Matrimonial Causes Rules governs evidence in matrimonial causes. Rule 25 (1) provides for witnesses at the trial or hearing of any matrimonial case being examined orally and in open court. There is though a proviso to that provision which gives discretion to the court, on application, to allow proof of certain facts by affidavit.
7. Going by the said provision I do therefore have discretion to entertain the summons dated 11th May 2013. As the cause is undefended, the respondent would suffer no prejudice should the matter be disposed of in the manner proposed by the applicant.
8. I do find merit in the said application, and I do hereby allow the same on the terms proposed. Costs shall be in the cause.

DATED, SIGNED and DELIVERED at NAIROBI this 31ST DAY OF July 2014.

W. MUSYOKA

JUDGE