

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

DIVORCE CAUSE NO. 70 OF 2013

B A O.....PETITIONER

VERSUS

M W S.....RESPONDENT

JUDGMENT

The petitioner **B A O** has filed this petition seeking the dissolution of her marriage to the respondent **M W S**. The respondent was duly served with both the petition as well as a summons to enter appearance. He failed to file any papers in response. The matter therefore proceeded as an undefended cause. The petitioner testified on 9th June, 2014.

In her evidence the petitioner told the court that she and the respondent got married on 28th April, 2011 at the Registrar's office in Mombasa. She produces a copy of the marriage certificate as proof of this fact **Pexb1**. Immediately after the marriage the respondent who was a Swiss national went back to Switzerland. In October, 2011 the petitioner also travelled to Switzerland to join her husband. The couple bore no children together. The petitioner told the court that she only lived in Switzerland for 1½ years. Disagreements erupted between the couple because the respondent who worked as a Chef refused/declined to regularize his wife's status in the country. As such she had no legal status to stay in the country and had to return to Kenya since she only held a visitor's visa. The petitioner told the court that the respondent extended her visitor's visa thrice then declined to extend it further. The petitioner returned to Kenya in 2013. The respondent has made no effort to come and see her or to resolve the question of her status.

The evidence of the petitioner has not been challenged or controverted since as stated earlier the respondent chose not to participate in these proceedings. As a court I have no reason to doubt the veracity of the petitioner. For a man to marry a woman, get her to move to his country and when she arrives there decline to regularize her immigration status is not only unreasonable but cruel. This meant that the petitioner could not legally work in Switzerland. Once she left and returned to Kenya the respondent has taken no steps to meet her to talk with a view to solving the problem. A marriage cannot subsist where the spouses live in different continents. I find that the ground of cruelty as provided by section 66(2) (b) of the Marriage Act 2014 has been proved. The actions of the respondent make it clear that he has no interest in sustaining the marriage.

I therefore allow this petition for divorce. Decree nisi to issue to be made absolute within three (3) months of today's date.

Dated and delivered in Mombasa this 15th day of August, 2014.

M. ODERO

JUDGE

In the presence of:

No Appearances