



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
DIVORCE CAUSE NO. 15 OF 2012

R S M.....PETITIONER

VERSUS

S K P PRESPONDENT

JUDGMENT

Before court is the notice of motion dated 7th November, 2012 seeking the following orders

- “1. This Honourable Court be pleased to give directions as to the determination of this court’s jurisdiction to continue to entertain and hear the petitioner’s petition regarding dissolution of the marriage herein by reason of the grounds of protest set out in the memorandum of appearance (under protest) filed by the respondent in this cause.**
- 2. The petition herein be struck out and or dismissed with costs to the respondent/applicant.**
- 3. If the court finds that the petition is properly before court, the respondent be at liberty to file an answer to the petition.**
- 4. Costs of this application be awarded to the respondent.”**

The background of this case is that the applicant **S K P P** a British citizen married the respondent **R S M** who held Kenyan citizenship at a ceremony conducted on 20th January, 2009 at the Registrar’s office in Mombasa. After the marriage the applicant returned to the United Kingdom where he worked as an IT Engineer. The respondent who was at the time working as a medical doctor in Mombasa resigned from her job and obtained a visa to travel to the United Kingdom in order to join her husband. On 25th April, 2009 the respondent moved to the United Kingdom where the couple set up a home. Their union was not blessed with any offspring. However the marriage was beset with problems. In March, 2010 the respondent secured a job in a hospital in the United Kingdom. Due to constant quarrels, fights and disagreements the respondent moved out of the matrimonial home on 3rd February, 2011. On 27th February, 2012 she filed at the High Court of Kenya in Mombasa a petition dated 23rd February, 2012 seeking the dissolution of the marriage.

The applicant was served with the petition whilst in the United Kingdom and on 18th December, 2012 he entered appearance. However the memorandum of appearance dated 7th November, 2012 and amended on 6th March, 2013 was filed “*under protest*” – the applicant took issue with the filing of the petition in

Kenya whereas the couple were resident in the United Kingdom during the marriage. The applicant did not file an Answer to the Petition. On 18th December, 2012 he filed this motion seeking to have the petition struck out.

The application was opposed by way of a replying affidavit dated 12th April, 2014. It was agreed that the application be disposed of by way of written submissions. The respondent filed their written submissions on 20th February, 2014. The applicant did not file any written submissions.

The main issue for determination is whether the High Court in Kenya has jurisdiction to hear and determine this divorce petition given that the couple though having conducted their marriage in Kenya proceeded to reside in the United Kingdom. In short the applicant submits that since both were domiciled in the United Kingdom for the duration of the marriage the courts in Kenya have no jurisdiction to entertain this petition.

The applicant is a citizen of the United Kingdom. However his wife is a citizen of Kenya. As such she retains the liberty at all times to approach the courts in Kenya for justice. The applicant relied on the case on **D C VS. F D C** Divorce Cause No. 97 of 2007. In that case Hon. Dulu J relied on sections 4(a) of the Matrimonial Cause Act Cap 152 to hold that a petition for dissolution of a marriage may only be presented in Kenya where the parties are domiciled in this country. However Cap 152 has since been repealed. I have carefully perused the new Marriage Act 2014 and find that it does not contain any similar provision. Apparently section 4(a) was not retained in the new Marriage Act. The respondent is a Kenyan citizen and retained her domicile in Kenya. The fact that she lived and worked in the United Kingdom for about 3 years did not mean that she lost her Kenyan domicile. The applicant has also cited section 5(1) of Cap 152 which provided that courts in Kenya would have jurisdiction in proceedings where the wife had been ordinarily resident in Kenya for at least 3 years preceding the presentation of the divorce petition. As stated earlier Cap 152 now stands repealed. Section 5(1) was not carried over into the new Marriage Act. It would appear therefore that based on the Marriage Act 2014 there is no limit to the jurisdiction of the court on the base on residence or domicile. By virtue of the marriage having been contracted in Kenya and the petitioner being a Kenyan citizen, I find that this matter is properly before this court. I find no merit in the present application and I declare that the courts in Kenya has requisite jurisdiction to hear and determine this petition. I decline to strike out the petition. I further direct that the applicant file and serve his Answer to Petition within 30 days of today's date. Costs of this application to be met by the applicant.

Dated and delivered in Mombasa this 18th day of December, 2014.

M. ODERO

JUDGE

In the presence of:

No appearance by either side