

REPUBLIC OF KENYA

High Court at Mombasa

Miscellaneous Application 6 of 2012

**IN THE MATTER OF AFRICAN CHRISTIAN MARRIAGE AND DIVORCE CAP. 151,
MATRIMONIAL CAUSE ACT, CAP. 152 LAWS OF KENYA**

AND

**IN THE MATTER OF A PROPOSED PETITION BY C.M.M FOR THE DISSOLUTION OF HIS
MARRIAGE WITH E.M.N.**

C.M.M.....PETITIONER

VERSUS

E.M.N.....RESPONDENT

RULING

By this originating summons dated 15th June, 2012 the petitioner seeks leave from this court to commence divorce proceedings notwithstanding the fact that three (3) years have not elapsed since the celebration of his marriage to the respondent. The respondent did file a reply to which she opposed the application.

It is not disputed that the couple got married on 14th August, 2010. Since the celebration of their marriage they have lived apart since due to the nature of their work (the petitioner being an Administration Police Officer whilst the respondent is an Army Officer) they have been posted in different towns. Section 6(1) of the Marriage Act Cap 152, Laws of Kenya permits a spouse to petition a court for leave to commence divorce proceedings notwithstanding the fact that six (6) months have not elapsed since the date of marriage. The only condition is that the applicant show 'exceptional hardship' to exist. In this case the fact that the couple live apart is due to exigencies of work. The applicant must have been fully aware of the nature of both their jobs when he entered into the marriage. The respondent in opposing the application has shown a desire to seek reconciliation. Indeed the three (3) year period exists to enable a couple to settle down in marriage and to adjust to the changes it necessitates. The applicant has not shown what (if any) steps have been made to seek out a solution.

In view of the respondent's desire to resolve the issues besetting the union and in view of the fact that only a few months remain to the three (3) year mark when leave will no longer be required, I am minded to disallow this application. The parties may use the remaining few months to attempt to reconcile their differences. As such leave is hereby denied. Each party to meet their own costs.

Dated and delivered in Mombasa this 25th day of February, 2013.

M. ODERO

JUDGE

In the presence of:

Ms. Kariuki h/b for Petitioner