

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

DIVORCE CAUSE NO.114 OF 2012

R S H.....PETITIONER

VERSUS

D W K.....RESPONDENT

J U D G M E N T

The Petitioner and the Respondent were married on 9th October 2009 at the Registrar's Office in Nairobi. After the celebration of the said marriage, the Petitioner and the Respondent cohabited together as husband and wife at [particulars withheld] Estate Nairobi. According to the Petitioner, since the celebration of the said marriage, the Respondent had failed to consummate the marriage. The Petitioner averred that she discovered after the marriage that the Respondent was incapable of sexual intercourse thereby failing in his cardinal duty as a husband. She stated that she did not have any idea that the Respondent was incapable of consummating the marriage before the celebration of the marriage and therefore it cannot be said that she condoned it. In the premises therefore, she prayed that the marriage be nullified.

The Respondent was served with the petition for divorce. He did not enter appearance. Neither did he file an answer to the petition. The Petitioner appeared before the Deputy Registrar of this court. She issued a certificate certifying that this petition proceeds to hearing as an undefended divorce cause. At the hearing of the petition, this court heard oral evidence of the Petitioner. She basically reiterated the contents of her petition for divorce. She told the court that when she discovered that the Respondent was unable to consummate the marriage, she implored the Respondent to seek medical treatment. She testified that the Respondent, for no apparent reason, refused to seek medical attention. She therefore urged the court to grant her petition for divorce and nullify the marriage. This court has carefully considered the facts of this case. It was clear to this court that the marriage between the Petitioner and the Respondent was celebrated on the basis of a lie. The Respondent led the Petitioner to believe that he had the capacity to consummate the marriage. This was not the case hence the frustration experienced by the Petitioner. It was apparent from the testimony of the Petitioner, that the Respondent was unwilling to have his condition resolved by seeking medical attention. The lack of consummation of a marriage is a ground upon which this court can declare a marriage to be a nullity. In this regard, the Petitioner established this ground to required standard of proof on a balance of probabilities.

In the premises therefore, the marriage celebrated between the Petitioner and the Respondent on 9th October 2009 is declared a nullity and is therefore dissolved. Decree nisi dissolving the said marriage is hereby issued. The decree nisi shall be made absolute thirty (30) days from the date of this judgment. There shall be no orders as to costs.

L. KIMARU

JUDGE

DATED, COUNTERSIGNED AND DELIVERED ON 20TH DAY OF JUNE 2013.

W. MUSYOKA

JUDGE