

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

DIVORCE CAUSE NO.110 OF 2012

S K.....PETITIONER

VERSUS

M M.....RESPONDENT

J U D G M E N T

The Petitioner and the Respondent were married on 9th December 2001 at the Nairobi Shree Lohana Mahajan Mandal Hindu Temple. According to the Petitioner, since the celebration of the said marriage, the marriage has not been consummated. This led to the separation of the Petitioner and the Respondent. The Petitioner avers that although he sought counseling with the Respondent in the hope that the marital situation would change, the Respondent still persisted in her refusal to consummate the marriage. In the premises therefore, the Petitioner prays that the marriage be nullified. The Respondent was served with the petition for divorce. She entered appearance. However, she did not file any papers in answer to the petition.

At the hearing of the petition, this court heard oral evidence adduced by the Petitioner. The evidence was adduced in the presence of counsel for the Respondent. The Petitioner reiterated the contents of his petition for divorce. He told the court that the marriage was not consummated because of the Respondent's refusal. He was emphatic that there was no medical reason for the lack of consummation. He testified that although he tried counseling, the marriage was still not consummated thus compelling him to petition this court to declare the marriage a nullity. This court has carefully considered the grounds put forward by the Petitioner in support of his petition for divorce on the ground of nullity. This court holds that the Petitioner did indeed prove to the required standard of proof on a balance of probabilities that indeed his marriage to the Respondent should be declared a nullity and be dissolved by reason of non-consummation of the marriage. From the evidence adduced, it was clear that the Respondent had no intention of consummating the marriage even after the couple had attended counseling sessions.

In the premises therefore, the marriage celebrated between the Petitioner and the Respondent on 9th December 2001 at the Nairobi Shree Lohana Mahajan Mandal Hindu Temple is hereby declared a nullity and hence is dissolved. Decree nisi dissolving the said marriage is hereby issued. The decree nisi shall be made absolute within thirty (30) days of the date of delivery 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