

REPUBLIC OF KENYA

COURT OF KENYA AT NAIROBI

Divorce Cause No.37 Of 2010

M N N.....PETITIONER

VERSUS

J N M.....RESPONDENT

R U L I N G

M N N, the Petitioner herein filed a petition seeking, inter alia, to be separated from the Respondent. The petition was served upon the J N M, the Respondent. He filed an answer to the petition. He also cross petitioned to be divorced from the Petitioner. The Petitioner filed a response to the petition denying the allegation made by the Respondent in his petition for divorce. This matter was place before the Deputy Registrar of this court to issue a certificate of readiness. The Petitioner raised an objection to the application seeking the issuance of the Registrar’s Certificate on the grounds that the cross petition that was filed was so filed contrary to the law. In particular, the Petitioner submitted that the cross petition was invalid because it had not been personally signed by the Respondent. The Petitioner urged the court to strike out the cross petition and proceed to hear the separation and maintenance cause as an undefended cause. The Respondent on his part was of the view that the application was misconceived in view of the fact that the advocate of the Petitioner, as the legal agent of the Petitioner, had authority to sign the petition on behalf of the Respondent. The Respondent urged this court to disallow the objection.

This court has carefully considered the arguments presented by both the Petitioner and the Respondent. The issue for determination by this court is whether there exists a competent answer to the petition and a cross petition in this cause. The Petitioner stated that under **Rule 3(5) of the Matrimonial Causes Rules**, the answer to the petition and the cross petition was required to be signed personally by the Respondent. There is no dispute that the answer to the petition was signed by the advocate of the Respondent on behalf of the Respondent. **Rule 3(5) of the Matrimonial Causes Rules** provides thus:

“Every petition shall, unless otherwise directed, be signed by the petitioner or, in case of an infant or a person of unsound mind, by his next friend.”

This court agrees with the Petitioner that this requirement applies *mutatis mutandis* to a cross petition filed by a Respondent. In the present petition, the Respondent did not sign the answer to the petition and the cross petition for divorce. The said pleading is therefore incompetent. It is hereby struck out. However, the Respondent is granted twenty-one (21) days to file a proper answer to the petition and a cross petition for divorce. The costs of the application shall be in the cause.

DATED AT NAIROBI THIS 26th DAY OF SEPTEMBER, 2013

L. KIMARU

JUDGE