



**IN THE MATTER OF A PROPOSED PETITION BY J.A.O FOR THE DISSOLUTION OF HER MARRIAGE WITH P.O.A**

**J.A.O.....APPLICANT**

**P.O.A..... RESPONDENT**

**RULING**

**The Applicant, J.A.O**, was married to **the Respondent, P.O.A**, in March 2010 in the Registrar’s office. She seeks leave of the court to file a divorce Petition before the expiry of three years. Section 6(1) of the Matrimonial Causes Act, Cap 152 stipulates.

*6(1) No Petition for divorce shall be presented to the court unless at the date of the presentation of the petition three years have passed since the date of marriage:*

*Provided that a Judge of the court may, upon application being made to him in accordance with rules made under this Act, allow a petition to be presented before three years have passed on the ground that the case is one of exceptional hardship suffered by the petitioner or of exceptional depravity on the part of the respondent, but, if it appears to the court at the hearing of the petition that the petitioner obtained leave to present the petition by any misrepresentation or concealment of the nature of the case, the court may, if it pronounces a decree nisi, do so subject to the condition that no application to make the decree absolute shall be made until after the expiration of three years from the date of the marriage, or may dismiss the petition without prejudice to any petition which may be brought after the expiration of the said three years upon the same, or substantially the same, facts as those proved in support of the petition so dismissed.”*

It is patent that the criteria for granting leave for a Petition to be filed before the expiry of three years since the solemnization of the marriage are (1) exceptional hardship suffered by the applicant (2) exceptional depravity on the part of the Respondent. In addition the court in determining an application for leave is required under Section 6(2) of the Matrimonial Causes Act to have regard to the interest of any children of the marriage and whether there is reasonable probability of a reconciliation between the spouses.

In her affidavit sworn on 26<sup>th</sup> May 2011 in support of the Application for leave, the Applicant avers that the marriage is blessed with one child, J.A, who is now 10 months old. The Affidavit shows that parties have attempted reconciliation, albeit without success. The Applicant alleges that she has been subjected to untold suffering and hardship including assault and verbal abuse, infidelity, failure to provide for the family, uncontrolled drinking of alcohol and irresponsible behavior.

Mr. Wachira, the learned counsel for the Applicant urged the court to grant leave on the basis of the Applicant’s said affidavit.

The Respondent was served with the application on 3<sup>rd</sup> June 2011 but did not file any affidavit in reply nor did he attend court for the hearing.

The test as to what is exceptional hardship is subjective and if the delay in waiting for the expiry of the three year period could cause serious injury to the Applicant's health, that circumstance could amount to exceptional hardship (**see C V C (1967), All ET 928; Hillier v Hillier (1958) P186 (CA)** Courts have granted leave where a wife alleged cruelty and sexual perversion and where the husband was violent within a few weeks of marriage including where a husband failed to support the wife and committed adultery ( **see v versus v (1966) IWL R 158a (C.A.) and Bowman v Bowman (1949) P 353 (C.A.)**)

The Respondent was served with the application for leave. He did not contest it. The allegations by the Applicant are uncontroverted. Continuous verbal abuse, infidelity, uncontrolled drinking of alcohol coupled with the Respondent's failure to support the Applicant constitute exceptional hardship. I so hold. It is my view and finding that the delay in waiting for the expiry of 3 years could cause serious injury to the Applicant.

Accordingly, I allow the application and grant the Applicant leave to Petition for divorce before the expiry of 3 years since the date of solemnization of the marriage. There shall be no order as to costs.

**Dated at Milimani Law Courts, Nairobi, this 16<sup>th</sup> day**

**of February 2012.**

**G.B.M. KARIUKI, SC**

**JUDGE**

**COUNSEL APPEARING**

***Mr. Muema of Kipkenda & Co. Advocates for the Petitioner***

***Ms Pamela Osodo - Court Clerk***