



C.J.M.....PETITIONER

VERSUS

A.M.G.....RESPONDENT

**JUDGEMENT**

1. The petitioner in the Divorce Cause No. 43B of 2010 married the respondent under the Marriage Act (Chapter 150 of the Laws of Kenya) on 6<sup>th</sup> September 2007 but had previously courted her since 2005. The marriage was formalized at the office of the Registrar of Marriages, Mombasa as proved by the Marriage Certificate No: {*particulars withheld*} produced before court as an exhibit.
2. The petitioner prays that this court issues a decree for nullity of the said marriage on the ground that the same is null and void for reason that the same has not been consummated, owing to the wilful refusal of the respondent. Particulars of the said wilful refusal by the respondent to consummate the marriage are set out in paragraphs 5 to 14 of the petition as supported by the petitioners' affidavit of 23<sup>rd</sup> October 2009. The petitioner has stated that the status of affairs has caused him acute anxiety, extreme mental and emotional anguish, embarrassment, humiliation and eroded his self esteem. The respondent is said to have abandoned the petitioner on the day of the marriage on 7<sup>th</sup> September 2007 and about three days thereafter travelled to the Netherlands, where she has resided since, without showing any intention of either returning to Kenya or facilitating the petitioner's travel thereto for possible cohabitation.
3. Despite being served with the petition on 22<sup>nd</sup> September, 2009 the respondent neither appeared in the Cause nor filed any papers in response thereto. The petition therefore proceeded ex parte, with a hearing notice having been served on the respondent but equally ignored.
4. In his sworn testimony, the petitioner told the court that there were no issues of the marriage. The petitioner gave an account of his attempts to communicate with the respondent without success. He considers the marriage to be non-existent.
5. I have considered the petitioner's evidence which is unchallenged. He has good cause to complain about the marriage to the respondent, which appears to have been a ploy by the respondent who appears to have had no real intention of becoming a wife.
6. I find that, in the absence of consummation and the apparent lack of interest on the part of the respondent in the said marriage the same is no marriage at all. I see no evidence that the petitioner has condoned the actions of the respondent, although his apathetic attitude towards the status of affairs leaves one in doubt as to whether he too can be said to have been serious about the whole thing.
7. I am satisfied that the facts, as presented before me clearly and show that the marriage of 7<sup>th</sup> September 2007 between the petitioner and the respondent is no marriage at all since it was never consummated and there appears to be no likelihood that it ever will be. I see no evidence that the petition was presented in collusion with the respondent.
8. Accordingly, I declare the said marriage between the petitioner and the respondent a nullity. A decree nisi shall issue forthwith in that respect.

Orders accordingly.

**DATED, SIGNED and DELIVERED at NAIROBI this 28<sup>TH</sup> DAY OF JUNE, 2012.**

**M.G. MUGO**

**JUDGE**

In the presence of :

Mr. Rombo holding brief for Mr. Gathogo for the petitioner.

No appearance for the respondent.