

REPUBLIC OF KENYA

High Court at Mombasa

Miscellaneous Application 4 of 2012

IN THE MATTER OF: A PROPOSED PETITION BY J.M.N FOR DIVORCE

J.M.N..... PETITIONER

=VERSUS=

J.O.O..... RESPONDENT

RULING

By way of an Originating Summons dated 3rd May 2012 the Petitioner makes the following prayers:

- “1. That the said J.M.N may be at liberty to file a Petition for Divorce at the High Court at Mombasa for dissolution of the marriage with the said J. A. O solemnized on the 9th March 2012, notwithstanding that 3 years have not passed since the date of the marriage.***
- 2. That the summons and Petition be served by way of registered letter through the last known address of the Respondent”***

The application was opposed by the Respondent who filed her replying affidavit on 18th July 2012.

The Petitioner and the Respondent are man and wife having solemnized their marriage on 9th March 2012 at the Attorney General’s Office in Mombasa. Barely two (2) months after that marriage the Petitioner filed this present application. S. 6(1) of the Matrimonial Causes Act, Cap 152 Laws of Kenya provides:

“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 the marriage

Provided that [my own emphasis] 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 ...”

Both parties filed their written submissions in court. I have read and have given careful consideration to those submissions. In my view the Petitioner does raise a prima facie case of exceptional hardship. The three (3) year period provided for in Section 6(1) was to allow the couple a chance to have a stab at marital life. However in such a case as this where the problems begin even before marital life has started then the courts will not compel parties to live together in misery for three (3) years. I am persuaded that this application has merit. I do allow the Petitioner to file a Petition for Divorce notwithstanding the fact that three (3) years have not elapsed since the date of the marriage. Each party to meet their own costs for this application.

Dated and Delivered in Mombasa this 27th day of November 2012.

M. ODERO
JUDGE

In the presence of:

Mr. Odera holding brief for Ms. Osino for Respondent