



REPUBLIC OF KENYA

High Court at Mombasa

Miscellaneous Application 20 of 2012

F. S. O.....PLAINTIFF

AND

D.N.W.....DEFENDANT

RULING

(1) On an application for leave to present a Petition for divorce before the expiry of 3 years after the date of marriage under Section 6 of the Matrimonial Cases Act, an Applicant must demonstrate four matters as follows:

(a) That the case is one of exceptional hardship suffered by the Petitioner; or

(b) That the case is of exceptional depravity on the part of the Respondent; or

(c) That having regard to the interests of the children leave should be granted; or

(d) That there is no reasonable probability of a reconciliation between the parties before the expiry of the 3 years.

(2) It is clear that the 3 year moratorium is designed to allow the parties to a marriage a reasonable opportunity to grow their relationship to a firm institution of marriage; to resolve any disputes which may have arisen by reconciliation; and to protect the interests of children of the marriage in their infancy. The provisions of the law under section 6 of the Matrimonial Causes Act appear to consider the period of 3 years to be adequate for these purposes and only allow earlier petitions in exceptional cases. I agree with this general policy of the law.

(3) The Applicant herein married on 25th June, 2011 and 10 months down the marriage, the Applicant seeks to file for divorce on the grounds of cruelty and desertion as shown in a draft petition attached to his application for leave dated 16th April, 2012. From his Supporting Affidavit, the particulars of cruelty are that sometimes between November 2011 and February 2012, the Respondent **“abused/insulted the Applicant both in private and publicly by referring to him as a useless man”**, insulted the Petitioner's employers leading to his termination; and verbally and by Sms humiliated the Petitioner by claiming that he was not sexually able to satisfy a woman. The Petitioner also alleged that the Respondent deserted the matrimonial home in November 2011, only 5 months after marriage. The Petitioner claimed that the Respondent had turned down all attempts at reconciliation indicating that she did not wish to return to the marriage.

(4) The Respondent has denied the Petitioner's version of events in a Replying Affidavit of 15th May,

2012 whose substance is that the parties should attempt reconciliation of their dispute which results largely from the Applicant's unfaithfulness. The Respondent claims that she was chased away by the Applicant and she did not desert the matrimonial home. She denies abusing the Applicant but avers that **“if at all I have insulted the Applicant at one time or another then it was during those fits of anger like any married woman would do when hurt by the husband. He has vacated our matrimonial home in Tudor and left my clothing with the watchman and he has moved in with another woman whom he claims to be his new wife to Ganjoni's Estate.”**

(5) The parties' advocates have filed respective written submissions based on the contentions taken by the parties in their pleadings and affidavits. I have considered the same and I find that the Applicant has failed to demonstrate any exceptional hardship on his part or depravity on the Respondent's part or that any serious attempts at reconciliation have failed. Moreover, the electronic record of alleged abusive Sms must be proved in accordance with the Evidence Act. It has not been shown by documentary evidence that the Petitioner lost his job because of the Respondent's actions as alleged or that the Respondent's alleged actions are depraved or abnormal of a woman in alleged similar circumstance; and the Applicant has not given the particulars as to the times, dates and venue as well as outcome of any reconciliation efforts. I am accordingly unable to find that there are compelling reasons to allow the leave of court to file a petition for divorce before the statutory period of 3 years since the marriage of the parties.

(6) Accordingly, the Applicant's Originating Summons dated 16th April, 2012 is dismissed with costs to the Respondent.

Dated and delivered on 21st November, 2012

EDWARD M. MURIITHI
JUDGE

In the presence of:

Miss. Odhiang for the Respondent

No appearance for the Applicant

Linda Court clerk