



**REPUBLIC OF KENYA**

**High Court at Nairobi (Nairobi Law Courts)**

**Divorce Cause 3 of 2012**

**S.N.K..... PETITIONER**

**VERSUS**

**R.A.C..... RESPONDENT**

**JUDGMENT**

1. **S N K**, the Petitioner, seeks an order that her marriage to **R A C**, the Respondent, be declared null and void on the ground of non-consummation.
2. The Petitioner, a business woman, and the Respondent, a businessman, got married on 30<sup>th</sup> April 2011 at the office of the Registrar at Parklands, Nairobi, as evidenced by the Certificate of Marriage Serial No.195402 issued under the Marriage Act, Cap 150 of the Laws of Kenya.
3. The Petitioner is domiciled in Kenya and is a citizen of Kenya while the Respondent is a Canadian Citizen domiciled in the United States of America.
4. In her Petition, the Petitioner alleges that the marriage has not been consummated owing to the willful refusal of the Respondent to consummate the same. The Petitioner further alleges that the Respondent left Kenya for the USA after the celebration of the marriage and caused the Petitioner's Visa to the USA to be cancelled.
5. The Petitioner was represented in this cause by Advocate B.M. Quadros (Mrs) who urged the court to allow the Petition and declare the marriage null and void.
6. The Petition was served on the Respondent who acknowledged service on 26.1.2012 but did not enter appearance or file answer. Consequently the Petition proceeded to hearing as an undefended cause after issuance of the Registrar's certificate.
7. In her evidence before me, the Petitioner told the court that after the marriage she and the Respondent did not live together. She told the court that the marriage was arranged by the parents. It was her evidence that she could not follow her husband to the USA as her Visa to that country was cancelled at the behest of the Respondent who also called back all the marriage gifts to the Petitioner. It is for the reason that the marriage was not consummated that the Petitioner seeks orders for the marriage to be nullified.
8. Section 13 of the Matrimonial Causes Act, Cap 152 of the Laws of Kenya which is the law governing the marriage in the instant case provides that a husband or a wife may present a petition to this court praying for his or her marriage to be declared null and void if pursuant to the provisions of Section

14 (1) (b) of the said Act, it is proved to the satisfaction of the court that it had not been consummated owing to the willful refusal of the Respondent to consummate it.

9. I am satisfied in this case that there was no consummation due to the willful refusal of the Respondent to consummate it. He left the country for the USA immediately after the marriage and caused the Visa of the Petitioner to be withdrawn to prevent her from following him to the USA. I am satisfied that the Petitioner has not acquiesced in the Respondent's failure to consummate the marriage.

10. Accordingly, I allow the Petition. I pronounce a decree of nullity of the said marriage on the ground that the Respondent willfully refused to consummate the marriage. I hereby nullify the marriage between the Petitioner and the Respondent.

11. In the first instance a **decree nisi** shall issue forthwith and subject to the provisions of Section 15 of the Matrimonial Causes Act, Cap 152, the **decree nisi** shall be made absolute after the expiry of three months after this pronouncement. It is so ordered. There shall be no orders as to costs.

**Dated at Milimani Law Courts, Nairobi, on this 22<sup>nd</sup> day of November 2012.**

**GBM KARIUKI SC**

**JUDGE**

**COUNSEL APPEARING**

***Advocate B.M. Quodros (Mrs) for the Petitioner***

***Mr. Kugwa, court clerk***