

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

DIVORCE CAUSE NO. 51 OF 2009

B E T W E E N

E.O.....

PETITIONER

V E R S U S

M.O.O.....

RESPONDENT

J U D G M E N T

The petitioner and the respondent were on 25th July 2007 married at the Registrar's office in Nairobi. The marriage was celebrated under the **Marriage Act**. After the celebration of the said marriage, the petitioner and the respondent did not live together as husband and wife. They lived in their separate residences in[..... and] estates. There were no issues in the marriage. According to the petitioner, the respondent duped her into getting married after promising to pay her college fees. According to the petitioner, she was not aware at the time the marriage was celebrated that she was getting married to the respondent. In her pleadings, and in her evidence in court, she stated that it was only later when she wanted to get married to another man that she discovered that she had been cheated into getting married to the respondent. She set out the particulars of mistake and deceit that was allegedly committed by the respondent. She alleged that she was not aware that she was entering into a marriage contract with the respondent at the time the marriage was celebrated. She told the court that at no time did she live together with the respondent in any capacity that bore any resemblance to cohabitation between a husband and a wife. She urged the court to annul the marriage as it was entered into by mistake and deceit.

The respondent was served with a copy of the petition. He did not enter appearance. Neither did he file any papers in answer to the petition. This court was satisfied that the respondent was properly served. It directed the petitioner to proceed with the hearing of her case, the absence of the respondent notwithstanding. This court has carefully considered the evidence adduced by the petitioner in support of her petition for divorce. At the time the marriage was celebrated the petitioner was twenty three (23) years old. It is rather incredible that the petitioner pleads ignorance to her having been aware that she was getting married to the respondent at the Registrar's office in Nairobi. May be the petitioner had been put under some duress to enable her attend and participate in the marriage ceremony. That notwithstanding, it is now clear that the petitioner is no longer under any spell that may have been cast by the respondent. She has now realised that she was married to someone she had no intention at all of marrying. It is her case that she was duped into getting married to the respondent because she was desperate to have someone pay her college fees. Having evaluated the facts of this case, though they may appear as fiction, it was evident to this court that the petitioner had no intention of getting married to the respondent. The fact that the petitioner and the respondent did not cohabit together as husband and wife is sufficient proof that the said marriage was indeed contrived.

In the premises therefore, it is clear that the marriage celebrated between the petitioner and the respondent was a nullity. The marriage celebrated between the petitioner and the respondent on 25th July 2007 at the Registrar's office in Nairobi is therefore annulled. Decree nisi annulling the said marriage is hereby issued. The decree nisi shall be made absolute thirty (30) days from the date of the delivery of this judgment. There shall be no orders as to costs.

DATED AT NAIROBI THIS 13TH DAY OF MAY 2011

L. KIMARU
J U D G E