

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MALINDI
CIVIL SUIT NO. 50 OF 2011

P.A.M.....APPLICANT

-VERSUS-

M.K.....RESPONDENT

RULING

The applicant **P.A.M** has made this application under section 6 of the Matrimonial Causes Act Cap 152 rule 2 (1) of the Matrimonial Causes Rules, seeking leave to present a divorce petition before expiry of three years of marriage against M.K (the Respondent) for the dissolution of their marriage which was celebrated on 30.03.2009. She depones in the supporting affidavit that she married the Respondent on 30/03/09 and the Marriage Certificate No.[PARTICULARS WITHHELD] is annexed confirming that they were married under the Marriage Act at the DC's office.

In February 2011, the Respondent, while indicating his desire to no longer continue in the marriage, walked out of the matrimonial home and has not returned since then. The Respondent has since completely refused to return despite the Petitioner's requests to do so and has turned down all attempts at reconciliation and has indicated he does not wish to return to the matrimonial home or stay in the marriage. There are no issues of the marriage.

Basically the Petitioner's lament is that Respondent has deserted the union and has indicated that he has no wish to return to the matrimonial home. It is not clear to me what hardship the Petitioner is undergoing or why she cannot wait until the lapse of three years before filing for divorce. There is nothing to suggest there is an imminent occasion that is being interfered with as long as the marriage exists, the Respondent is not even on the scene. Although it is alleged that there have been attempts at reconciliation, it is not demonstrated what this comprised – Rule 2 (2) (e) of the Matrimonial Causes Act is very clear, the party must demonstrate.

“Whether any, and if so what attempts or reconciliation have been made”

And Rule 2 (2) (f) further states;-

“particulars of any circumstances which may assist the court in determining whether there is a reasonable probability of reconciliation between the parties”

What this means is that a party cannot just make a blanket statement that there have been attempts at reconciliation which have failed without giving specifics. I am not persuaded that the situation presented before this court is deserving of the orders sought and I decline to grant the same. The upshot is that the application is dismissed with costs.

DELIVERED AND DATED THIS 20TH DAY OF JULY 2011 AT MALINDI

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JUDGE
Mr Shujaa