



DATED AT NAIROBI THIS 25TH DAY OF FEBRUARY 2010

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

DIVORCE CAUSE NO.126 OF 2007

G.W.N.....PETITIONER

VERSUS

C.F.A.....RESPONDENT

J U D G M E N T

G.W.N (the petitioner) married C.F.A (the respondent) on 7th January 2004 under the **Marriage Act**. After celebration of the said marriage, the petitioner and the respondent cohabited together as husband and wife at South C estate in Nairobi. There is no issue born to the said marriage. According to the petitioner, sometime after the said marriage, he discovered that the respondent was infact still legally married to one R.G.K.M having been so married on 25th April [...]at Lavington United Church Nairobi. The petitioner averred that when he confronted the respondent with this information, the respondent left the matrimonial home never to return. It is for the above reason that the petitioner was seeking the intervention of this court to have the said marriage declared null and void and consequently he be divorced from the respondent.

The respondent was served with a copy of the petition. She failed to enter appearance within the requisite period. Neither did she file any papers in answer to the petition. The Deputy Registrar of this court issued a certificate allowing the petitioner to proceed with the hearing of the petition, the absence of the respondent notwithstanding. At the hearing of the petition, the petitioner adduced oral evidence essentially reiterating the contents of the petition for divorce. I have carefully considered the said evidence. The petitioner indeed established that the respondent lacked legal capacity to celebrate a marriage with the petitioner because she was still married to one R. G.K.M. The petitioner produced a certificate of marriage under the **African Christian Marriage and Divorce Act (Cap 151)** which established that indeed the respondent celebrated the said marriage on 25th April 1998 at Lavington United Church Nairobi. There is no evidence to suggest that the respondent was divorced from the said R.G.K.M before she purported to enter into the subsequent marriage with the petitioner. Under **Section 11(1)(d) of the Marriage Act**, to constitute a valid marriage under the said Act, *“neither of the parties with the intended marriage is married under African Customary Law or in accordance with Mohammedan law to any person other than the person with whom such marriage is proposed to be contracted.”*

Section 42 of the same **Act** provides that where a person celebrates a marriage, with a person whom he or she knows to be married to another person shall be liable to imprisonment for a period not exceeding five (5) years. The offence is known as bigamy.

In the premises therefore, this court will allow the petition for nullity of marriage. The marriage celebrated between the petitioner and the respondent on 7th January 2004 is hereby declared null and void. The respondent had no capacity to enter into a marriage with the petitioner. *Decree nisi* is hereby issued granting the said petition for nullity of marriage. The said decree shall be made absolute thirty (30) days from today's date. There shall be no orders as to costs.

DATED AT NAIROBI THIS 25TH DAY OF FEBRUARY 2010

L. KIMARU
JUDGE

L. KIMARU
JUDGE