



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)

Divorce Cause 210 of 2001

N.M..... PETITIONER

V E R S U S

G.R. W.....RESPONDENT

R U L I N G

Before me is a Chamber Summons dated 10th November, 2009, filed by M/s Ndirangu Kamau advocates for the respondent. The application was brought under section 22 of the Matrimonial Causes Act (**Cap. 152**) and Rule 3(3) of the Matrimonial Causes Rules. It seeks the following orders-

1. ***THAT this Honourable Court do set aside, nullify and/or reverse the decree nisi and decree absolute issued on 9th December, 2004.***
2. ***THAT this applicant be given leave to file her answer and cross-petition.***
3. ***THAT the court be pleased to order the matter to proceed to full hearing.***
4. ***THAT the petitioner be condemned to pay the costs of this application.***

The application was filed with a supporting affidavit sworn on 10th November, 2009.

The application was served on M/s Agina Associates Advocates on 18/11/2009, and stamped as having been received. The said advocates were the advocates of the respondent/petitioner. However, no response was filed. The application therefore stands as unopposed.

The applicant has come to court under section 22 of the Matrimonial Causes Act (**Cap. 152 of the Laws of Kenya**) and Rule 3(3) of the Matrimonial Causes Rules.

Section 22 of the Matrimonial Causes Act provides-

- (1) ***Any married person who alleges that reasonable grounds exist for supporting that the other party to the marriage is dead may present a petition to the court to have it presumed that the other party is dead and to have the marriage dissolved, and the court, if satisfied that such reasonable grounds exist, may make a decree of presumption of death and of the dissolution of the marriage.***

- (2) *In any such proceedings the fact that for the past seven years or upwards the other party to the marriage has been continuously absent from the petitioner, and that the petitioner has no reason to believe that the other party has been living within that time, shall be evidence that he or she is dead until the contrary is proved.*
- (3) *Sections 15, 16, 34 and 35, of this Act shall apply to a petition for divorce and a decree of divorce respectively.*

The above section grants jurisdiction to declare a spouse who has not been heard of for 7 years or more as dead, and to dissolve his or her marriage.

Rule 3 (3) of the Matrimonial Causes Rules, on the other hand provides-

3(3) *Except where these Rules otherwise provide, every Application shall be made to, and any leave or direction shall be obtained from, a judge by summons in chambers.*

Both section 22 of the Act, and Rule 3(3) of the Matrimonial Causes Rules do not confer on this court jurisdiction to set aside, nullify or reverse a decree which has been made absolute. It is for an applicant to cite the proper laws, sections and rules that confer on this court the jurisdiction to grant the prayers sought. The applicant has not done so. I find that that application is incompetent and I strike it out. For the avoidance of doubt, the applicant can file a proper motion to challenge the decision in accordance with the law.

Otherwise, I strike out the Chamber Summons dated 10th November, 2009 as incompetent.

Dated and delivered at Nairobi this 15th day of April 2010.

George Dulu
Judge.