

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
DIVORCE CAUSE NO.3 OF 2008

V.T.G.....PETITIONER

VERSUS

M.C.M.....RESPONDENT

R U L I N G

The petitioner and the respondent were on 28th February 2007 married at the Registrar's office, Nairobi under the **Marriage Act**. Soon after the said marriage, the petitioner and the respondent cohabited briefly in Nairobi before the petitioner relocated to China where she has secured employment while the respondent went to the United Kingdom. The marriage was not blessed with any children. According to the petitioner, soon after the celebration of the said marriage, she discovered that the respondent had misled her when he claimed that he was a divorcee at the time of their marriage. The petitioner states that she discovered that the respondent was married to one E.J.K.M in South Africa. It was her case that the respondent had therefore no capacity to enter into a monogamous marriage with the petitioner. It is on this ground that the petitioner urges the court to annul the marriage because, in her view, the respondent fraudulently duped her into entering the said marriage when he knew, or ought to have known that he lacked legal capacity to marry the petitioner. The petitioner asked the court to declare her marriage to the respondent to be null and void and therefore liable to be annulled.

The respondent was served with a copy of the petition for divorce. He did not enter appearance. Neither did he file any answer to the petition. This court was satisfied that the respondent was duly served and directed the hearing of the divorce cause proceeds, the absence of the respondent notwithstanding. In her oral testimony, the petitioner reiterated the contents of her petition for divorce. Having carefully considered the said evidence, it was apparent to the court that the respondent lacked capacity to enter into a lawful marriage with the petitioner at the time he purported to enter into the said marriage. This is because the respondent was still lawfully married to one E.J.K.M, a marriage celebrated on 26th January 2005 in Benoni, South Africa. A marriage under the **Marriage Act** is monogamous. A party who is already married, cannot enter into a lawful marriage under the said Act. It was evident to the court that the petitioner proved her case that the marriage ought to be declared null and void on the ground that the respondent lacked capacity to enter into a lawful marriage with the petitioner because he was already legally married to another woman.

In the premises therefore, this court declares the marriage solemnized on 20th February 2007 between the petitioner and the respondent to be null and void. *Decree nisi* dissolving the said marriage is hereby issued. The said *decree nisi* shall be declared absolute within thirty (30) days of the date of this judgment. There shall be no orders as to costs.

DATED AT NAIROBI THIS 1ST DAY OF APRIL, 2010

**L. KIMARU
JUDGE**