



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**  
**AT MALINDI**

**MATRIMONIAL CAUSE NO. 14 OF 2008**

**C.A.M.....PLAINTIFF**

**-VERSUS-**

**W.T.C.....DEFENDANT**

**RULING**

C.M.A (the petitioner) has filed this cause against W.T.C (the respondent) in which she petitions for the dissolution of the marriage between her and the respondent. The couple married under the Marriage Act (Cap 150) on 4<sup>th</sup> May 2008 and were issued with a certificate which she has produced.

There are no issues to the union and since the date of the marriage the marriage was not consummated owing to the willful refusal of the respondent to consummate the same. The petitioner states that her consent was fraudulently obtained as:-

- (i) She did not understand the language in which the marriage proceedings were conducted.
- (ii) She was led to believe that whatever was being undertaken was pre-nuptial for the actual marriage to take place in future, if intended.
- (iii) After the said marriage celebration, the conduct of the respondent radically changed to the negative and the petitioner began questioning the respondent's bona fides.
- (iv) The respondent utterly declined to cohabit with the petitioner after the date of the said marriage, notwithstanding the many attempts made by the petitioner at reconciliation.

She prays the court finds that the marriage never was and should be declared null and void.

The matter proceeded ex parte after the Deputy Registrar directed that it proceeds as an undefended cause.

The petitioner and respondent met at Angles Bay in Mambui, Malindi in February 2006. They had a very good friendship and petitioner expressed the desire to live in Kenya. Respondent introduced her to many people both at Angles Bay and within the village and they eventually got married on 4<sup>th</sup> May 2008. The events leading to the said marriage is that on 4-5-08 they visited Malindi along the market, late in the evening. Respondent told petitioner that he was interested in visiting Italy and requested her to write him an invitation letter to Italy. Respondent then took the letter to the District Commissioner, Malindi, where she was made to believe that they were signing documents which would enable respondent to visit Italy. So she signed the documents pegged on what respondent told her as she did not understand the

language that was used or the language that the documents were written in. There was no translator and the two witnesses named in the marriage certificate i.e S.G and N.S were not people known to her and she had no intention to getting married to the respondent.

Two months after the ceremony, petitioner was called from Milan in Italy and requested to collect a certificate – which was in Italian language. It was a marriage certificate from the Municipal of San Giovanni indicating that she was married to W.T.C . She was surprised. Now because of that certificate all her opportunities of getting married are compromised yet she would like to get married and have a family in Italy. She confirms that she had discussed about marriage with the respondent but she had not given her consent for any marriage to be conducted and her signature to the marriage certificate was obtained through trickery.

She also realized that respondent had no intention of getting married to her and had only used the marriage certificate to get his way to Italy – because just a week after the said marriage respondent travelled to Italy.

She states in her evidence that respondent's conduct has caused her a lot of damage and after the visit to the DC's office they just returned to Angels Bay and did not get intimate – hence there was no consummation. It was on this basis that she prays for the union to be nullified, so that she can get back to her state as a single lady.

I recognize that parties are bound by their pleadings and I am unable to reconcile how in her evidence petitioner claims to have been tricked into marriage and she didn't even release they had had a wedding, yet in her pleadings at paragraph 7(v) she says the respondent utterly declined to cohabit with her or have any relations whatsoever notwithstanding the many attempts made by the petitioner at reconciliation – surely if there was no marriage at least petitioner had not consented to it, then what were the attempts at reconciliation for?

The truth is that petitioner was fully aware what she had got herself into – only that while she had hoped for it to be a well settled marriage relationship, respondent only went through it so as to be able to travel to Italy. Surely one does not just walk to the DC's office and sign a marriage certificate without certain standard preliminaries including establishing consent of both parties by asking the infamous phrase: ***“Do you take XYZ to be your lawfully wedded”***

I am not persuaded that there was any misrepresentation as to what the pair were going through. However there is the other aspect which petitioner alludes to, which is that they did not consummate the union. Under section 14 of the Matrimonial Causes Act a marriage may be declared a nullity on inter alia grounds that:

***“14(1)(b) the marriage had not been consummated owing to the willful refusal of the respondent to consummate the marriage”***

That is the aspect which seems to have a footing as petitioner has testified that respondent completely refused to consummate the union and a week later flew out of the country.

It is on this limb that I declare the union a nullity and therefore void. Costs of this petition shall be borne by the respondent.

Delivered and dated this 10<sup>th</sup> day of **December 2010** at Malindi.

**H. A. Omondi**  
**JUDGE**

Mr. Shujaa holding brief for Njeru for plaintiff  
No appearance for respondent

