



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT KITALE**

**Divorce Cause 2 of 2006**

CC.....PLAINTIFF

VERSUS

DJMN.....DEFENDANT

**R U L I N G**

By a Notice of Motion, pursuant to section 3 and 3A of the Civil Procedure Rules, section 6 and 8 of the Matrimonial Causes Act, the applicant seeks orders:

1. That this honourable Court be pleased to dismiss this petition for want of prosecution.
2. In the alternative, this honourable Court be pleased to order to be struck out the petitioner's petition dated 9<sup>th</sup> February, 2006, for being incompetent and an abuse of the process of the court.
3. That the petitioner be condemned to pay costs of this application and the entire petition.

The application is based on the grounds that:

- (i) The petitioner filed this petition for divorce on 13<sup>th</sup> February 2006 and a reply to answer to petition on 24<sup>th</sup> April 2006.
- (ii) It is now over 2 years and the petitioner has never taken any step to prosecute her divorce cause.
- (iii) The petitioner has lost interest in prosecuting this matter since the same has never been listed for hearing even once from 2006.
- (iv) The continued existence of this matter in court is prejudicial to the applicant.
- (v) This petition was presented to court prematurely and in contravention of the provisions of the Matrimonial Causes Act. (Cap 152) Laws of Kenya.
- (vi) The grounds on which this petition was filed are so remote that orders of divorce cannot be granted.

The Notice of Motion is bare. It has no affidavit in support – no evidence.

At the hearing, I was urged to note that the petition was filed on 13<sup>th</sup> February 2006 and a reply to the answer to the petition on 24<sup>th</sup> April. That two years down the line, the petitioner has not taken any steps to prosecute the divorce cause. Hence the petitioner has lost interest in prosecuting the petition.

The applicant's last and final position is that in any event the petition was presented in court prematurely – before three (3) years as enjoined by the Matrimonial Causes Act.

I have scanned the record herein, paragraph 2 of the petition avers thus:

**“That on the 8<sup>th</sup> day of August, 2003,**  
**while the petitioner was a spinster and**  
**the respondent purportedly a “bachelor”**

**the two underwent a ceremony of marriage  
at the Registrar's office at Kitale".**

Section 6 of the Matrimonial Causes Act (Cap 152) Laws of Kenya provides:

**"No petition for divorce shall be presented  
to the court unless at the date of the  
presentation of the petition three years  
have passed since the date of marriage.**

**Provided that a judge of the court may,  
upon application being made to him in  
accordance with the rules made under  
the ordinary allow a petition to be  
presented before three years have  
passed on the ground that the case is  
one of exceptional hardship suffered  
by the petitioner or of exceptional**

**depravity on the part of the respondent, but, if it appears to the court at the hearing of the petition by  
any misrepresentation or concealment of the nature of the case, the court may, if it pronounces a decree  
nisi, do so subject to the condition that no application to make the decree absolute shall be made until  
after the expiration of three years from the date of the marriage, or may dismiss the petition, without  
prejudice to any petition which may be brought after the expiration of the said three years upon the  
same, or substantially the same, fact as those proved in support of the petition so dismissed.**

**In determining any application under this section for leave to present before the expiration of three  
years from the date of the marriage, the judge shall have regard to the interests of any children of the  
marriage and to the question whether there is reasonable probability of reconciliation between the  
parties before the expiration of the said three years.**

**Nothing in this section shall be deemed to prohibit the presentation of a petition based upon matters  
which have occurred before the expiration of three years from the date of the marriage".**

I have no application before me for orders of presentation of the petition before the three years. In the premises as the  
petition was brought before three (3) years as enjoined by the law, the same was thus presented prematurely.

For the above reasons the petition is struck out. Each party will bear his/her own costs.

Dated and delivered at Kitale this.....29<sup>TH</sup> .....day of.....JUNE.....2009.

**N.R.O. OMBIJA  
JUDGE**

**N/A for petitioner**

**For respondent**