



REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA

AT MALINDI

Divorce Cause 13 of 2007

M.A.E.B .....PETITIONER

VERSUS

S.K.M.....RESPONDENT

JUDGMENT

M.A.E.B filed this petition dated 15<sup>th</sup> October 2007 on the same day for the dissolution and/or annulment of the marriage.

The petitioner's marriage to the respondent was conducted at the District Registrar's office at Malindi on 21<sup>st</sup> July 2004 under the provisions of the Marriage Act (Cap 150) Laws of Kenya. A certificate of marriage was consequently issued on 28<sup>th</sup> July 2004 by the presiding Registrar of Marriage.

At the time of celebration of the marriage the respondent was then a bachelor and the petitioner was then a spinster.

The petitioner and the respondent did not commence cohabitation immediately. The respondent continued to stay with his parents and the petitioner with her parents.

Both the petitioner and the respondent, at the time of filing the petition, have been domiciled in Kenya for a period of three (3) years prior thereto. **There are no issues of the marriage.**

The petitioner seeks dissolution of the marriage on grounds of cruelty as itemized in paragraph 6 of the petition, desertion as itemized in paragraph 7 of the petition, and annulment particularly for lack of consummation of the marriage as particularized in paragraph 7(b) of the petition.

Upon being served with a copy of the petition and notice to appear, the respondent failed to enter appearance. The petitioner then moved the court under rule 29 of the Matrimonial Causes Rules for the Registrar of the High Court to issue a certificate that the pleadings were in order which was duly done on 25<sup>th</sup> January 2008.

In her testimony, the petitioner's evidence was that she got married to the respondent, on 21<sup>st</sup> July 2004, at the D.C's office in Malindi. Since the celebration of the marriage the respondent has failed to provide for the petitioner as his wife, failed to set up a matrimonial home for the petitioner and deserted the petitioner. Hence her prayer for divorce. In the alternative a prayer for annulment since there has **not been any sexual intercourse between the petitioner and the respondent.** The petitioner asked for

costs of the petition.

I have carefully considered the testimony of the petitioner. I have equally enquired into the grounds of divorce and/or annulment.

On the evidence, it is clear to me, that the petitioner and the respondent's marriage was solemnized under and in accordance with the provisions of the Marriage Act (Cap 150) Laws of Kenya. In law, such a marriage can only be lawfully dissolved and/or annulled under the provisions of the Matrimonial Causes Act (Cap 152) Laws of Kenya.

Section 14(1) of the Matrimonial Causes Act (Cap 152) Laws of Kenya provides:

*“The following are the grounds on which a decree of nullity of marriage may be made –*

*(i) that either party was permanently impotent, or incapable of consummating the marriage, at the time of the marriage; or.....”*

I have the evidence of the petitioner that the marriage has not been consummated by the omission of the respondent. The respondent was served but has not filed an answer to the petition. In the premises I accept the evidence of the petitioner that the marriage has not been consummated in law.

I am fortified in this regard by the definition of consummation as enunciated in BROMLEY'S FAMILY LAW SEVENTH EDITION at pages 83 – 85.

*“A marriage is said to be consummated as soon as the parties have sexual intercourse after solemnization .....*”

I am satisfied that there has not been any collusion between the petitioner and the respondent in presenting or prosecuting the petition. Concomitantly, I am satisfied that there has not been any unreasonable delay in presenting or prosecuting the petition.

In the result, I am satisfied, on the basis of the evidence adduced, that the case for the petitioner has been proved on a balance of probability. Accordingly, I pronounce **a decree nisi** for annulment and order that the marriage between petitioner and the respondent be and is hereby annulled. A **decree-absolute** to be granted after six (6) months upon application. Each party to bear his/her own costs. It is so ordered.

Dated and delivered at Malindi this 17<sup>th</sup> day of April 2008.

**N. R. O. Ombija**

**JUDGE**