



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MOMBASA**

**DIVORCE CAUSE NO. 53 OF 2006**

**SULEIMAN SAID SARAI ..... PETITIONER**

**V E R S U S**

**COLLETTE MARIE JOSEPHE DREANO ..... RESPONDENT**

**J U D G M E N T**

This divorce petition was filed in court on 23<sup>rd</sup> October, 2006. The petitioner seeks two orders:-

- (a) That the marriage between the petitioner and the Respondent be officially dissolved.**
- (b) That the costs of the petition be awarded.**

**The petitioner's case is that he married the respondent** in the Registrar's office, Mombasa, on 8<sup>th</sup> June, 2005. Thereafter the couple went to France and the Respondent's family did not approve the marriage. The couple then returned to Kenya and serious misunderstandings between the spouses led to a separation on 6<sup>th</sup> March, 2006. Since then, they have been living separately and there is no prospect of reconciliation. On those grounds, it is the petitioner's case that the marriage has irretrievably broken down and that it should be dissolved. There is no issue of the marriage.

Without going to the merits of the petition, it is clear that the marriage between the parties was solemnized in the Registrar's Office, Mombasa, on 8<sup>th</sup> June, 2005. A certified copy of an entry of marriage in respect thereof is attached to the petition, but its serial number is incomplete.

No doubt this marriage was contracted under the Marriage Act, Cap 151 of the Laws of Kenya on 8<sup>th</sup> June, 2005. The petition for divorce was filed in court on 23<sup>rd</sup> October, 2006. That was 1 year and 4 months after the date of the marriage. Section 6(1) of the Matrimonial Causes Act imposes a restriction on petitions for divorce during the first three years of marriage. It states as follows:-

"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 rules made under this Act, 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 ..."

This petition was presented to the court before three years had passed since the date of the marriage. There is no evidence that any application was made in court and allowed for this to be done before three years had passed. In the circumstances, this petition is premature and, therefore, incompetent. It is accordingly struck out with no order as to costs.

It is so ordered.

Dated and delivered at Mombasa this 9<sup>th</sup> day of May, 2008.

L. NJAGI

JUDGE