

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)

Misc. Appli. 67 of 2007 (OS)

IN THE MATTER OF A PROPOSED PETITION BY AMW FOR THE
DISSOLUTION OF HIS MARRIAGE WITH MARGARET WK

RULING

This is an application by AMOS MWAURA WANGENDO who seeks an order for leave to petition this court for the dissolution of his marriage to MARGARET WANJA KAMAU before the expiry of the mandatory period of three years. The two contracted a civil marriage at the Registrar's office in Nairobi on 19/9/2006.

He bases his application on several grounds including cruelty, desertion and adultery by his wife, which in his view have led to the breakdown of their marriage. He also contests the paternity of a child who it is claimed is a child of their union.

The application is opposed on all grounds, and if I understood Margaret's pleadings well, it is her contention that the two have cohabited as man and wife since the year 2000; that there was a presumption of marriage long before they solemnised their marriage during the year 2006, and that in the circumstances he cannot deny the fact that they have been married for more than three years.

In an application of this nature, the court is guided by section 6 of Matrimonial Causes Act Cap 152 of the Laws of Kenya ('the Act') which provides that:

(1) *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 Ordinance, 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 that the petitioner obtained leave to present 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 facts as those proved in support of the petition so dismissed.

(2) *In determining any application under this section for leave to present a petition 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 a reconciliation between the parties before the expiration of the said three years.*

(3) *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".*
(Underlining mine)

I have considered the pleadings herein as well the submissions by both counsel and in my view the

applicant who is currently based in the United Kingdom and who alleges cruelty, desertion and adultery by his wife has failed to convince me that his case is one of exceptional hardship, neither has he convinced me that the respondent is guilty of exceptional depravity.

In my humble opinion, marriage is not a one day affair, nor is it a bed of roses, these two ought to explore possibility of reconciliation.

I do in the circumstances disallow this application with costs.

Dated and delivered at Nairobi this 23rd day of October 2008.

JEANNE GACHECHE

Judge

Delivered in the presence of:

Mr. Makumi for the applicant.

Miss Adhiambo for the respondent.