



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
MISC. MATRIMONIAL CAUSE 38 OF 2008

AHPETITIONER

V E R S U S

FK RESPONDENT

JUDGMENT

By a petition dated 31st July, 2008 and filed under this Miscellaneous Matrimonial Cause, the Petitioner prays that the marriage celebrated between him and the Respondent be declared null and void.

The facts as set out in the petition are that the petitioner and the respondent solemnized a marriage in the Registrar's Office, Nairobi, on 4th May, 2007. The parties and their respective parents had a greed that the marriage would be consummated only after the petitioner and the respondent had undergone a Muslim marriage ceremony in Toronto, Canada where the petitioner lives and works. It was further arranged that after the Respondent had obtained the requisite travel documents from the Canadian authorities in Kenya, she would travel to Canada where the couple would not only consummate the marriage but also live as husband and wife. The respondent never traveled to Canada as arranged, and has not consummated the marriage. On the contrary she has indicated to the Petitioner that she is no longer interested in the marriage, thereby occasioning this petition.

According to an affidavit of service file din court in this matter on 14th August, 2008, the Respondent was duly served with the petition and notice to appear. She did not deem it fit to enter appearance or to make any answer to the petition. Upon her failure to do so, the matter proceeded ex parte since it is unopposed.

In his evidence, the petitioner said that he was petitioning to have his marriage nullified. The parties underwent a civil marriage in the Registrar's Office, Nairobi, on 4th May, 2007. He produced a copy of the certificate of that marriage as his exhibit 1. The understanding between the parties and their parents that the bride would travel to Canada where the petitioner lived and worked. In Canada they would undergo a Muslim marriage after which the marriage would be consummated.

The Petitioner duly travelled back to Canada where he worked and resided, but the respondent never joined him there as agreed. The respondent remained back in Kenya with her parents, and todote she has not gone to her husband in Canada. This in effect means that the marriage between the parties is voidable owing to the willful refusal of the respondent to consummate it. It is now more than one year since the date of the marriage, and with the respondent having intimated to the petitioner that she is no longer interested in the marriage, there is no longer any need to retain a marriage which has remained voidable since its inception more than one year ago, and there is no reasonable prospect that it will ever be consummated. It is in the best interest of both parties that such a marriage be nullified so that each party may be free to go on with its own life without the shackles of marriage which is no more than a sham.

Section 14 of the Matrimonial Causes Act, Cap. 152 of the Laws of Kenya, provides the grounds upon which a decree of nullity may be pronounced. It states as follows-

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

(a) ...

(b) that the marriage had not been consummated owing to the willful refusal of the respondent to consummate the marriage ...”

In the instant case, the respondent has, by her willful refusal to consummate the marriage, exposed the said marriage to nullification and I am satisfied that it ought to be nullified.

I accordingly make the following orders –

(1) That the marriage solemnized at the Registrar’s Office in Nairobi on 4th May, 2007 between the Petitioner and the Respondent herein be and is hereby nullified.

(2) Decreee nisi to issue.

*(3) Decree nisi to become absolute upon
application after 14 days.*

(4) Each party to bear its own costs.

Dated and delivered at Mombasa this 3rd day of October 2008.

L. NJAGI

JUDGE