



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT ELDORET

MATRIMONIAL CAUSE 1 OF 2001.

HARBANS SINGH MANN PETITIONER

VERSUS

MANINDERPAL KAUR MANN RESPONDENT

JUDGEMENT

The Petitioner filed this Petition on 1st March, 2001. He sought inter alia for an order that the marriage between himself and his wife, Maninderpal Kaur Mann is null and void and that he be granted a Decree Nisi.

The Petitioner stated that he served the Petition by substituted service by way of publication of a Notice in a local English daily newspaper. He had obtained orders to that effect.

The Petition came for hearing before me on 12th March, 2007. The Petitioner has now migrated to the United States of America and lives in Union City, California. He was born in Kenya on 25th March, 1956. In February, 2000 he went to India to get married. He looked around and identified the Respondent as a wife to be. He disclosed to her that he intended to move to the USA. She was a teacher in India and she agreed to be married to him.

The Petitioner testified that they underwent a Hindu marriage ceremony on 15th March, 2000 and the marriage was registered on 16th March, 2000. They were issued with a Certificate of Marriage which was produced in Court. The Petitioner stayed in India for 3 days after the marriage after which he came back to Kenya. He testified that they did not have any sexual relationship during the time as the Respondent was having her monthly menstrual periods. He left her in India and travelled to Kenya on 19th March, 2000 as she did not have any travel documents and his air ticket was about to expire.

The Petitioner testified that the Respondent joined him in Kenya in April, 2000 after he had sent her an air ticket. He said that they lived in Eldoret at West Indies area. They did not consummate the marriage by having any sexual relationship. The Respondent always claimed that she was tired.

In June, 2000, two months later, the Petitioner went to the USA as he had gotten a Green Card to settle in the USA. He said that he was processing her papers so that she could join him in the USA. The Petitioner said that he had left the Respondent to stay with his cousin. He used to call her every week.

The Petitioner stated that in August, 2000, he received a call from his cousin stating that the Respondent had left the house and disappeared. He instructed his cousin to report the matter to the

Police. The Petitioner returned to Kenya in December, 2000. He stated that he called her parents in India but they used to disconnect the telephone. The Petitioner then lodged this Petition.

I have considered the Petition herein and the evidence of the Petitioner. The Petitioner did not place any evidence before this Court to prove or show that the Respondent ever came to Kenya between April – August, 2000. He did not produce any copy of an air ticket or passport. He did not produce any visa or other document to show that she had been allowed entry into Kenya. He did not call his cousin Kuldip to corroborate his evidence. He did not produce a certified copy of the O.B. at the Police Station to show that any police report had been made about the disappearance of the Respondent.

In the circumstances, I am not satisfied that this Court has any jurisdiction to hear any disputes relating to the marriage between the Petitioner and the Respondent as there is no evidence she ever came to Kenya and lived here. It is not enough that the Petitioner was born in Kenya or domiciled here at the time of the marriage. During the trial he was no longer a resident in or citizen of Kenya. This Court cannot nullify a marriage that was registered in India and one of the parties never set foot on Kenyan soil. The Court with appropriate jurisdiction is the High Court in India or any other Courts with relevant jurisdiction over there.

It follows that the service of the Petition was questionable as there is no evidence that the Respondent ever set foot in Kenya. To this Court the Respondent so far is a “Phantom” for purposes of this Petition.

I do hereby dismiss the Petition with no order as to costs.

DATED AND DELIVERED AT ELDORET ON THIS 23RD DAY OF MARCH, 2007.

M. K. IBRAHIM

JUDGE