



REPUBLIC OF KENYA

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

Divorce Cause 103 of 2006

JPP.....PETITIONER

VERSUS

PHR.....RESPONDENT

JUDGMENT

JPP, petitioned the court to declare her marriage to **PHR**, “*null and void*”, on the grounds of “*concealment of material facts*,” prior to and on the day of the marriage.

The petition and all relevant facts were served on the respondent, but he did not enter appearance, or file an answer to the petition. The Deputy Registrar certified the cause as undefended.

The petitioner got married to the respondent under Hindu Customary Law in Nairobi on 15th May 2005 and prior to that, the two got married in Lenasia, South Africa on 9th February 2005. They were issued with Marriage Certificates from the 2 ceremonies. The petitioner produced both in court as exhibits.

The petitioner met the respondent through the internet, “**shaadi.com**”. She produced a copy of the write up as an exhibit in court. She got interested in the details given about the respondent in the internet, and she contacted him directly in May or June, 2004 in Johannesburg, South Africa. They established contact by email and telephone. This continued for about 6 months, and in December, 2004 the respondent traveled to Kenya with his mother. He met the petitioner regularly and they talked about marriage and in February 2005, the petitioner too traveled to Johannesburg, South Africa, to try and get to know the respondent better, and this resulted in them going through a civil marriage on 9th February 2005.

The petitioner returned to Kenya after the said ceremony, and in May 2005, the respondent traveled to Nairobi once more accompanied by his mother and the couple went through a Hindu customary marriage.

The 2 returned to South Africa to establish a home where they started living as husband and wife.

Soon after this, the petitioner noticed certain aspects of her husband, which she considered unusual, for example excessive sleeping – i.e. sleeping for long hours, and this got worse over the weekends.

The petitioner also noticed that her husband was “*withdrawn*”. That he sat alone in one place, thinking for hours. Further, her husband at 1st claimed that he was employed but had stopped working. He did get a job, nevertheless and worked for only 3 months, and left it, this time claiming that he was suffering racism at his place of work. He was an Asian of South African nationality. He soon left that job and got another one, which he also left after 3 months because he fell ill.

It was at that point that the petitioner discovered that her husband was suffering from “*Schizophrenia*”, and had been suffering from the disease for the past 8 years.

The respondent finally confessed to his wife that he was suffering from the disease. The petitioner further discovered that her husband never completed his degree course, yet it was reflected in his profile in the internet that he had completed and had a degree. The respondent also confessed that he “**hardly worked**” as he spent most of the time in the internet.

Observing her husband very closely, the petitioner noticed that his chin “**trembled**” and his hand “**shook**”. Later she discovered that these were symptoms of the medication he was taking for his illness.

Though the respondent had claimed that he never smoke or drank alcohol, the petitioner discovered that he actually did. Because of all these discoveries and confessions, the petitioner informed her parents about her husband’s condition in January 2006.

Wanting to discover more about her husband’s illness, the petitioner questioned his mother, who denied. Besides, the petitioner noticed that her husband’s family was reluctant to take him to the Doctor initially, but finally agreed and took him for treatment, and though admission was recommended because he was very sick, the family refused and opted to have him treated as out patient.

The petitioner produced a copy of the prescription and the medication given to her husband during that period of illness. The respondent was moved to his parent’s house because he was very sick. He stayed with them for 3 to 4 weeks, and on 21.1.2006, the petitioner’s own parents arrived from Nairobi to join her in Johannesburg, South Africa because of these developments.

The petitioner eventually returned to Kenya with her parents on 6.2.2006. She has had no contact with her husband since then.

She prayed the court to annul the marriage because the facts presented to her by the respondent before marriage were false, as he deliberately concealed information about his illness and other facts, which information would have enabled her to make an informed decision whether to marry him or not.

The petitioner disclosed that during their brief stay together they did not have “**normal sex relationship**”.

She prayed that the marriage be annulled and the Hindu ceremony be declared “*null and void*”. The petitioner stated further,

“This marriage was based on lies. I have lost trust in him and I cannot remain married to him any more”.

The petitioner called her father as a witness, one PVP, a semi-retired advocate of the High Court of Kenya

who confirmed that his daughter the petitioner got married to the respondent both in South Africa and in Kenya, and on both occasions, he was present. He also confirmed that his daughter moved to live with her new husband in South Africa, and they communicated on and off.

He recalled January 2006, when his daughter called and reported to him that there was some serious medical problems, with her husband, in fact, “*medical disorder called Schizophrenia*”.

The petitioner’s father was “*very upset and disturbed*”. He kept daily contact with his daughter, and on either 21st or 22nd January 2006, he traveled to South Africa with his wife and on arriving in their daughter’s house, they found the respondent “*almost half unconscious*”.

Mr. PVP did not talk to the respondent much because he appeared to be very sick. He also lamented that he had met the respondent’s parents before the wedding, but they did not disclose that he had a mental

problem.

The petitioner's father expressed his disappointment to the respondent's parents and told them he would return to Kenya with his daughter, which he did and subsequently cut off all contact with them and the respondent as he discovered that his medical condition is incurable.

The petitioner's counsel made detailed submissions, which now form part of the court record.

On the law applicable, the counsel submitted on Sections 13 and 14(e) and (f) of the Matrimonial Causes Act, on the circumstances that amount to a marriage being declared "*null and void*", such circumstances as "***the respondent having obtained the petitioner's consent to the marriage by fraud, misrepresentation etc etc***".

The advocate submitted further that a marriage can also be declared "*null and void*" if, "***either party to the marriage is of unsound mind or subject to fits of insanity or epilepsy***", as the respondent in this case was.

The court records show that the respondent was served with the Notice of the institution of the Divorce Petition as well as the petition itself, and all the relevant documents. He did not respond and because of that, the petitioner's evidence remains unchallenged. That is the evidence which revealed what attracted the petitioner to the respondent when she read his profile in the "***matrimonial matchmaking website, i.e. shaadi.com***".

The respondent deliberately failed to disclose information of the mental illness ***Schizophrenia***, which he had suffered for 8 years, and was constantly on medication, which made him sleepy all the time and caused him tiredness. He was unable to be gainfully employed as a result of the illness.

The respondent also cheated about his qualifications, which attracted the petitioner into marrying him.

I find that the respondent must have known that the information he posted about himself in the website was false and misleading. Indeed that information misled the petitioner who chose him and picked up correspondence with him, and eventually agreed to marry him. This was clearly "***marriage based on false pretences***", and cannot be allowed to stand. I therefore proceed to declare "***the marriage between [JPP and PHR] solemnized on 9th February 2005 in Lenasia Republic of South Africa, null and void***".

I further declare

“the Hindu customary law marriage between [JPP and PHR], solemnized in Nairobi on 15th May 2005, null and void”.

Finally, I order the respondent to pay the costs of these proceedings.

I direct that the decree nisi do issue today and the same to be made absolute within a period of 30 days from today.

Dated at Nairobi this 26th day of April, 2007.

JOYCE ALUOCH

JUDGE