



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MALINDI

MISC CAUSE 89 OF 2006

**IN THE MATTER OF AN APPLICATION FOR LEAVE TO FILE DIVORCE PETITION
BEFORE THE MANDATORY PERIOD OF THREE YEARS.**

AND

IN THE MATTER OF MATRIMONIAL CAUSES RULES

AND

IN THE MATTER OF GIOVANNI RINALDI.....APPLICANT

VERSUS

PATIENCE APEJA OPUNGO.....RESPONDENT

R U L I N G

By an application by way of originating summons, dated 11th July 2006, pursuant to the provisions of section 6(1) of the Matrimonial Causes Act and Rule 2(1 and 2) of the Matrimonial Causes Rules, the applicant seeks orders:-

1. THAT the GIOVANNI RINALDI may be granted leave to file a Petition in the Divorce Registry at Malindi for dissolution of his marriage with the said PATIENCE APECH OPINGO solemnized on the 17th day of March, 2006 notwithstanding that Three (3) years have not passed since the date of the said marriage.

2. THAT cost of this application be provided for.

The originating summons is based on the grounds that

- (a) The marriage has broken down irretrievably.**
- (b) The said marriage has caused the applicant exceptional hardship.**
- (c) The applicants life is at risk.**

The originating summons is supported by the annexed affidavit of Giovanni Rinaldo sworn on the 7th day of July 2006.

For the applicant it was argued that, the applicant and the respondent were married on 17th March, 2006 and have not yet been blessed with any issue of the marriage.

That the marriage has irretrievably broken down with the applicant experiencing exceptional hardship in the course of the marriage, to wit:

- (a) *the respondent has been engaging in open and public extra marital affairs to the applicants chagrin and dismay and embarrassment.***
- (b) *the respondent enjoy self confessed sexual affair with one Christian at Karibuni village in Malindi.***
- (c) *the respondent constantly accosts and harasses the applicant wherever and whenever they met***
- (d) *the applicant and the respondent are already living apart by reason of the matters aforesaid and more so by reason of drunkenness and violence.***
- (e) *the respondent for three days confiscated all the applicants credit cards and passport thereby causing the applicant great financial stress for want of money.***
- (f) *On 31st May 2006 while at the offices of North Coast Travels Ltd Malindi, the respondent confronted the ladies who work there claiming they were the applicant's lovers.***
- (g) *On 31st May 2006 the respondent accosted the applicant at Melinde Restaurant and stoned the applicants vehicle parked outside, Reg.No. KAT 962 S, thereby breaking the back right window and windscreen using stones.***

The respondent was served with the application on the 20th day of August 2007 as per the affidavit of service of Samson Kimbeja sworn on even date but failed to attend court.

I have carefully analysed the applicant's grounds for leave and the affidavit in support and take the view that the same justifies leave to file divorce proceedings notwithstanding that three (3) years have not elapsed.

Accordingly, the application is granted in terms of prayer 1 only. Costs shall be in the cause.

Dated and delivered at Malindi this 3rd day of September 2007.

N.R.O.OMBIJA

JUDGE