



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MOMBASA**

**Matrimonial Cause 37 of 2005**

**F A M ..... PETITIONER**

**- Versus -**

**U H S ..... RESPONDENT**

**Coram: Before Hon. Justice Mwera**

**Muinde for Petitioner**

**N/A for Respondent**

**J U D G M E N T**

By the petition filed here on 30/5/2005, the petitioner F A pleaded that she married the respondent herein on 28/11/2003 at the registrar's office at Nairobi. That after celebrating that marriage the two neither cohabited together nor consummated the union. That instead the respondent on the evening after the wedding, packed and left for his home country, Germany never to return. The petitioner was left behind. She added that her consent to marry was obtained when the respondent misrepresented to her that the marriage would enable her to easily get into the labour market in Germany. That the respondent also failed to disclose to the petitioner that he had six children in Germany from a previous marriage – a situation that could not permit the respondent to adopt the petitioner's daughter. That in essence this marriage could not be recognised in Germany and so the two could not live together. And further that the respondent was a fugitive of the law. F sought a declaration that their marriage was a nullity.

She gave evidence before this court more or less on the same lines of the petition adding that she got the information about the respondents' status back in Germany from his best man. The petitioner stressed that their marriage was never consummated and it was contracted on account of fraud and misrepresentation.

Mr. Muinde summarized the contents and effects of section 14 of the Matrimonial Causes Act (Cap 152) and asked the court to grant the orders sought with a decree nisi being issued for a shorter time than the usual six months.

After hearing the petitioner, this court is satisfied that because the marriage was never consummated, it was actually a nullity from the beginning. Even had that happened, there is the fact of this other marriage in Germany with six children and particularly that the marriage of these two here could not be recognised there.

In the result the marriage herein is declared null. Decree nisi to issue in six (6) weeks and thereafter decree absolute to issue.

Judgment accordingly.

Delivered 5/1/2006

J.W. MWERA

JUDGE