

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA

Divorce Cause 40 of 2004

K.C.B.VPETITIONER

VERUS

M.K.PRESPONDENT

R U L I N G

M.K.P, the Respondent herein, invoked the provisions of Sections 15 and 18 of the Civil procedure Act in a motion dated 26th January 2006 in which she sought for this petition to be transferred to the Nairobi High Court for hearing and determination. The Respondent filed an affidavit in support of the motion. The Petitioner, K.C.B.V vehemently opposed the motion by filing a replying affidavit.

The Respondent put forward two main grounds in support of the motion. The first ground is that the Petitioner deserted the matrimonial home in Nairobi for Mombasa. Secondly, that it would be very expensive for the Respondent to attend the hearing of this matter in Mombasa

The Petitioner on his part opposed these grounds by stating that the Marriage was solemnized at Mombasa in the Registrar's office hence the dispute can be competently handled here. He also accused the Respondent of seeking to delay the hearing of the petition by such unmeritorious applications.

I have considered the submissions made by Mr. Gor advocate for the Respondent/Applicant and Mr. Mutubia for Petitioner/Respondent. I have further perused the pleadings placed before this court. It is not contested that the marriage now sought to be dissolved was solemnized at the Mombasa Registrar of Marriages office on 26th day of August 1988. The copy of the certificate of marriage annexed to the Petitioner's affidavit confirms that fact. By then the Petitioner was a resident in Mombasa and the Respondent lived in Nairobi. The main ground the Respondent has relied on to buttress her motion is that of expense. A critical look at Sections 15 and 18 of the Civil Procedure Act will reveal that such a ground is not one that can be used to obtain such orders. The Respondent has not claimed that she will transport witnesses from Nairobi so that this court can infer that she and her witnesses would be inconvenienced. Consequently, I see no merit in the application. In the end the motion is ordered dismissed with each party meeting his or her own costs.

Dated and delivered at Mombasa this 30th day of June 2006.

J.K. SERGON

J U D G E

In the open court in the presence of Miss Jadeen h/b Swaleh for the Petitioner and Mr. ananda for D.M. Guadros for the Respondent

Sergon, J