



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

**Divorce Cause 37 of 2005**

**P.O.A..... PETITIONER**

**VERSUS**

**N.M.M ..... RESPONDENT**

**RULING**

Before me is an application dated 29<sup>th</sup> March, 2006 provided under Rule 3(3) of the Matrimonial Causes Rules.

It seeks the prayer that the hearing of this cause be stayed till Petitioner/Respondent complies with the provisions of Rule 14 of the Matrimonial Causes Rules (hereinafter referred to as 'the Rules').

The brief history of this application can be summarized as under.

The Petition by the wife herein was filed on 26<sup>th</sup> February, 2002.

M/s Chacha Mwita and Co. Advocates filed their appearance on behalf of the husband/Respondent herein on 7<sup>th</sup> March, 2002.

The wife/Petitioner filed an application to amend her petition which was dated 16<sup>th</sup> May, 2005, and the same which was heard on 21<sup>st</sup> July, 2005. As per the record of the court, there was no appearance from the Respondent's Advocate. I do see that there is an affidavit of service and in any event the court had proceeded ex-parte after satisfying that the counsel for the Respondent was duly served.

The application to amend the Petition was granted with further orders to file and serve the amended petition within 14 days and the Counsel for the Respondent was given 14 days to file response to the amended petition.

The answer to the amended petition was filed on 10<sup>th</sup> August, 2005.

Thereafter the application dated 21<sup>st</sup> September, 2005 was filed to seek registrar's certificate of compliance under the Matrimonial Causes Rules.

The certificate was granted on 17<sup>th</sup> November, 2005 once again in absence of the Respondent's

Counsel, I do see Affidavit of service on the record of this cause.

On the day i.e. on 23<sup>rd</sup> March, 2006, when the petition was fixed for hearing the Learned Counsel for the Respondent sought the leave to file an application for review of the certificate aforesaid.

Thus the application before me which is supported by the grounds stated on the face thereof.

The only thing complained by Mr. Chacha, the Learned Counsel for the Respondent, is that the amended petition when served upon the Respondent was not certified as required under Rule 14(6) of the Rules.

When asked what would be the effect of the answer to the Amended Petition filed by his firm on behalf of the Respondent, Mr. Chacha just repeated that the certificate of compliance was not appropriate.

Similarly when the court asked how the court can stay the proceedings under the circumstances, I was referred to sub-rule 5(b) of Rule 14 of the Rules.

In my opinion, the aforesaid sub-rule cannot help the respondent, simply because the sub-rule quoted comes into effect before or at the time the order for amendment is granted and only in the case where the registrar's certificate had been issued, before the amendment which is not the case here.

Registrar's certificate herein was granted after the pleadings were closed in the amended Petition.

I shall for the sake of clarity, reproduce the aforesaid provision namely Rule 14(5) (b).

**“5: An order made under this rule shall....**

**a) .....**

**b) If made after the registrar has given his certificate under rule 29 of these Rules, provide for a stay of the hearing until that certificate has been renewed.”**

I need not say that Rule 14 of the Rules provides for provisions as to amended and supplemental petitions.

Coming to the issue on hand, Mr. Chacha insisted that as the amended petition was not certified when served, all further proceedings has be stayed until requirements of rule (6) are complied with. In short, he contended that the omission to serve the certified copy of the amended Petition is fatal even though it is responded to without any protest or demur.

I also place here that despite the affidavit of service of the Respondent's Advocate, there is an averment that he was not served with the application for Registrar's certificate. This averment is made by the Respondent in his affidavit in support.

I further note very seriously that this application is made only after the Petition was fixed for hearing and no explanation for the delay is made.

I am also not shown any provision granting me the power to stay the proceedings apart from Rule 14 (5) (b) of the Rules which I have already referred to earlier. I was told abrasively to use my inherent powers, which in any event I do not have under the Matrimonial Causes Act, (Cap 152 Laws of Kenya) and the Rules made there under which provisions are all encompassing making the Act self contained piece of legislation.

Even if I am persuaded to believe that I have inherent powers to meet the basic concept of justice and fair play, I have to consider whether the irregularity was in respect of rules of procedure which can be waived and is not fundamental to the proceedings which in turn will make the whole proceedings a nullity.

I have also to consider whether any injustice or prejudice is suffered by the Applicant when the Petitioner/Respondent did not serve him with a certified copy of the amended petition. I do not see any and none has been shown to me.

In my humble view to stay the proceedings at this stage is to defeat the equity specially when the objection was not raised timeously.

The upshot of all the aforesaid is that I dismiss the application dated 29<sup>th</sup> March, 2006.

I shall however, not make any order as to costs.

Dated and signed at Nairobi this 8<sup>th</sup> day of June, 2006.

**K.H. RAWAL,**

**JUDGE**

**8.6.06**