



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

Divorce Cause 32 of 2006

THE HINDU MARRIAGE & DIVORCE ACT, CAP 157

THE MATRIMONIAL CAUSE ACT, (CAP. 152)

BETWEEN

S.J.C.SPETITIONER

VERSUS

J.C.S.....RESPONDENT

JUDGMENT

The petitioner S.J.C.S filed a petition for nullification of her marriage through A.B. Shah Advocate. The petition is dated 1st March 2006 and was filed on 7th March 2006. The respondent is named as J.C.S.

According to the petition the petitioner (a spinter) got married to the respondent on 2nd April 2005 at Parklands in Nairobi under the rites and ceremonies of the Hindu religion. The petitioner and the respondent then cohabited in Mombasa for four months. Thereafter the petitioner returned to Nairobi. The reason for seeking nullification of the marriage is because of the willful refusal of the respondent to consummate the marriage arising out of entry into an arranged marriage which was not of his choice.

The respondent did not enter appearance or file an answer to the petition though he was said to have been served with a copy of the petition filed, a notice of petition and memorandum of appearance. Therefore the Deputy Registrar on 15/6/2006 certified that the matter should proceed to hearing as an undefended cause.

The matter came for hearing before me on 20/7/2006. Only the petitioner testified. It was her testimony, that she celebrated a marriage with the respondent on 2/4/2005 at [particulars withheld]. This was a Hindu marriage. They were issued with a marriage certificate, which she produced as exhibit 1. Thereafter she went through a civil marriage ceremony with the respondent at the Registrar General's Office Mombasa. She produced the marriage certificate which shows that the date of that civil marriage ceremony was 19/7/2005.

During her marriage life, she cohabited with the respondent in Mombasa. There were no children of the marriage. She asked the marriage to be annulled because the respondent refused to consummate the

marriage because he was forced to the marriage. The petitioner currently living in Nairobi and was working and comfortable. She was a Kenya citizen. She did not need any maintenance.

After the conclusion of the evidence Mr. A.B. Shah advocate for the petitioner made short submissions. He sought to rely on the case of D –VS – D [2004] 2 KLR 444 for the nullification of the marriage.

From the evidence on record, I am satisfied that indeed a marriage was celebrated between the petitioner and the respondent under Hindu rites on 2nd April 2005. That same marriage was subsequently converted into a civil marriage under the Marriage Act (Cap 150) on 19th July 2005, which was about three months thereafter.

The petitioner has testified that the said marriage was not consummated by the respondent. She testified that the respondent stated that the marriage was a forced marriage, not one of his choice. The evidence of the petitioner is not controverted at all. The respondent did not enter appearance, or file an answer to the petition nor did he appear in court.

The divorce proceedings herein were brought under the Matrimonial Causes Act (Cap 152). Section 14 of the Act lists the grounds on which a marriage can be declared by the court to be null and void. The relevant part of the Section 14 provides as follows –

“14 (1) The following are grounds on which a decree of nullity of marriage may be made –

(b) That the marriage had not been consummated owing to the willful refusal of the respondent to consummate the marriage”

The petitioner has testified before me that the respondent

refused to consummate the marriage because the marriage was a forced marriage. That evidence is not controverted. I have no reason to doubt the evidence of the petitioner. I am convinced that, indeed, the respondent willfully refused to consummate the marriage. That is a legal ground for nullification of the marriage. Consequently, I have to nullify the marriage between the petitioner and the respondent. I therefore order as follows –

1. I declare the marriage between the petitioner and the respondent to be null and void.
2. I hereby order that a decree nisi for the nullity of the marriage do issue forthwith, to be made absolute after the lapse of 30 days.
3. The petitioner will bear the costs of the proceedings, as the respondent did not enter appearance or defend himself.

Dated and delivered at Nairobi this 21st day of September 2006.

Dulu

Ag.Judge

In the presence of –