



**REPUBLIC OF KENYA**

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

**Divorce Cause 41 of 2006**

**E.W.G..... PETITIONER**

**VERSUS**

**F.K.N..... RESPONDENT**

**JUDGMENT**

On 23.03.06 the petitioner filed petition praying for the following orders:-

1. That the marriage between the petitioner and respondent be dissolved and a divorce granted.
2. That the respondent be condemned to pay costs of this cause.
3. That this honourable court do grant other and further relief as it may deem fit and just.

Salient facts of the petition are as under. The petitioner and respondent reside and are domiciled in Kenya. They got married on 31.03.2000 at the Shrine of Mary Help of Christians, Nairobi under the Marriage Act, Cap.150. They cohabited in Nairobi between March, 2000 and May, 2001. There is no issues of the marriage. It was the petitioner's case that since celebration of the marriage the parties have been incapable of consummating the marriage. The petitioner added that she was not accessory to nor did she condone the respondent's inability to consummate the marriage. Petitioner further deposed that she and the respondent did not collude to have this petition filed.

There is in the court file an affidavit by Jane W. Matenguri, process server to the effect that on 10.04.06 she served the petition herein and two copies of notices upon the respondent. There is no evidence in the file that the respondent either entered appearance or filed answer to the petition. Also in the file is an affidavit by Claire Nanjala Wanjama, an Advocate of the High Court of Kenya

confirming that she served the respondent with requisite hearing notice but the respondent never turned up for the hearing of the petition herein. The cause, therefore, proceeded as an undefended cause.

Hearing of the petition was on 26.10.06. At the hearing the petitioner was represented by learned counsel, Miss A.N. Muniafu. There was no appearance for the petitioner.

I have duly considered the petitioner's case. She appeared before me on 26.10.06 and formally adopted her pleadings. The petitioner's evidence is uncontroverted and I accept it. The marriage has not been consummated since it was contracted about 6 years ago. In the circumstances, the correct prayer should be for a decree of nullity of the marriage. Accordingly, I hereby declare null and void and pronounce a decree of nullity of the marriage between the petitioner and respondent. *Decree nisi* shall issue forthwith, the same to be made absolute after expiry of 30 days, upon application therefor. The respondent shall bear the plaintiff's costs of the petition.

Orders accordingly.

**Delivered at Nairobi this 16<sup>th</sup> day of November, 2006.**

**B.P. KUBO**

JUDGE