



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
Divorce Cause 24 of 2006

I.M.M.....PETITIONER

VERSUS

C.N.N.....RESPONDENT

JUDGMENT

The petitioner I.M.M filed a petition dated 15th February 2006 through Muri Mwaniki Kiruti & Wambuiti advocates. The petition was filed on 17th February 2006 and the respondent was named as C.N.N. In the petition the petitioner sought for the following orders –

- (a) The marriage between the petitioner and the respondent be declared null and void.
- (b) The respondent do pay the costs of and incidental to these proceedings.
- (c) Any other or further relief that this Honourable court may deem fit to grant.

In the petition the petitioner averred that he got married to the respondent under the Marriage Act in the Attorney General's Chambers on 7th May 2002 and was issued with a marriage certificate, a copy which he annexed to the petition filed. That after the marriage, the petitioner and the respondent neither lived nor cohabited together. That the marriage was not consummated and there was no issue of the marriage. That soon after the marriage the respondent left the country for further studies in the United States of America. That the petitioner was seeking nullification of the marriage because it had not been consummated.

The respondent filed a Notice of Appearance on 4th April 2006 through Khayega Chivai advocate. She however never filed advocates. She however never filed an answer to the petition. Consequently the Deputy Registrar on 15th June 2006 certified that the matter do proceed as an undefended cause.

On the hearing date which was 26/10/2006 only the petitioner testified. The respondent was not presented nor did she appear in court. It was the petitioner's evidence that he was a sales Engineer. That he was relying on a copy of the marriage certificate for the marriage between himself and the respondent. That he got marriage to the respondent on 7/5/2002. That after marriage they never cohabited together as the respondent was reluctant to join him at Buru Buru. Both had intended to go to the United States of America. The respondent went to the United States of America the same month of May 2002 and it had been difficult to get in touch with her except on e-mail. Though the respondent came to Kenya in 2004 to renew her visa, she kept that visit as secret and only e-mailed him to tell him that she had renewed visa and was going back to the United States of America. He asked the court to dissolve the marriage.

I have considered the petition and the evidence of the petitioner. The averments in the petition and the evidence of the petitioner is not controverted at all. From the evidence on record, I find that, indeed, at the date of presenting the petition herein there was a valid marriage between the petitioner and the respondent which was capable of being dissolved.

The petitioner has asked for annulment of marriage on the grounds that the said marriage has not been consummated. Under section 14 (1) (b) of the Matrimonial Causes Act (Cap. 152) willful refusal by a wife/or husband to consummate a marriage is a ground for nullification of a marriage. The said section provides –

”14(1) The following are the grounds on which a decree be made –

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

The evidence before me is that the respondent refused to join the petitioner after marriage to consummate it. She instead chose to stay with her parents in Nairobi. She then left for the United States of America in May 2002 and has never cohabited or consummated an act of willful refusal to consummate her marriage with the petitioner for more than 3 years. That is a ground on which the marriage should be nullified, and I will nullify the same.

The petitioner has asked for costs of proceedings. The respondent neither filed an answer to the petition, nor appeared in court to contest the petition. I will therefore not award costs.

For the above reasons I allow the petition of the petitioner and order as follows –

1. The marriage between the petitioner and the respondent be and is hereby declared null and void. A decree nisi do issue. A decree nisi do issue forthwith to be made absolute after lapse of three months from today.
2. The petitioner will meet his own costs of these proceedings.

It is so ordered.

Dated and delivered at Eldoret this 16th day of November 2006.

George Dulu

Ag. Judge

Mr. Muri - I asked for copies of proceedings and judgment

George Dulu

Judge

Court: Petitioner or his counsel to be provided with certified copy of proceedings and judgment, subject to payment of copying charges.

George Dulu

Judge

16/11/2006