

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
DIVORCE CAUSE 56 OF 2004

IN THE MATTER OF: PETITION BY S.M.K.....APPLICANT

FOR THE ANNULMENT OF HER MARRIAGE WITH M.K.....RESPONDENT

J U D G M E N T

This is a petition for the nullification of the marriage between the Petitioner and the Respondent. It is presented on the ground that the marriage has never been consummated.

The petition was served upon the Respondent who has not appeared or filed any document in opposition. In her testimony before me the Petitioner stated that the parties got engaged on the 26th February 2003 and on 21st May 2003 they solemnised their marriage at the Registrar of Marriages' office at Mombasa. She further stated that being Muslims they had to conduct an Islamic marriage before engaging in any sexual relations.

They wanted to conduct an Islamic marriage after the Petitioner was granted a visa to travel to Canada and join the Respondent who was a resident there. The Respondent left for Canada two days after the marriage and applied for the visa. The same was however not granted and they have therefore not conducted the Islamic marriage which precedes consummation.

The Petitioner further testified that after exchanging correspondence with the Respondent she has realized that they have irreconcilable differences and that she does not think that their marriage will be a happy one. She therefore prays that her marriage with the Respondent be nullified. She does not make any monetary claim against the Respondent.

Upon reading the petition herein and considering the testimony of the Petitioner I am satisfied that the marriage between her and the Respondent has not been consummated.

The Respondent left the country two days after their marriage on the understanding that they would conduct an Islamic marriage after the Petitioner would have obtained a visa to travel to Canada to join him. The Petitioner has not been able to obtain a visa and the Islamic marriage has not been conducted. The parties have therefore not consummated their marriage. A marriage which is not consummated is a nullity. I therefore declare the marriage between the Petitioner and the Respondent a nullity and grant this petition with no order as to costs.

DATED and delivered this 23rd day of June 2005.

D.K. MARAGA

J U D G E