

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
DIVORCE CAUSE 41 OF 2004

S.A.K.....PETITIONER

- Versus -

M.S.Y

M.K.S.....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 which was solemnized at the Registrar of Marriages Office at Mombasa on 14th October 2003. It is presented on the grounds that at the time of entering into that marriage the Petitioner was still legally married to another man and that the marriage has never been consummated. The petition was duly served upon the Respondent who has neither entered appearance nor filed any document in opposition.

In her testimony before me the Petitioner stated that on 2nd January 1998, at a ceremony conducted at Scarborough, Ontario, Canada, she married one E.R.J but they separated and she came back to Kenya. She has never gone back. She thought that that marriage was for all intents and purposes dissolved. She therefore married the Respondent on 14th October 2003.

The Petitioner further testified that under Islamic law parties are forbidden from having sexual intercourse even after conducting a civil marriage until they have conducted an Islamic marriage. In this case before they conducted an Islamic marriage she says she was advised by her lawyer that her previous marriage was still subsisting and she should have had it dissolved or nullified before entering into the second marriage. She informed the Respondent of the position and they did not consummate their marriage. She produced a certificate of Divorce showing that her previous marriage to E.R.J was dissolved by the Canadian Supreme Court on 30th May 2004.

Having considered this evidence I am satisfied that at the time of entering into the marriage the subject of this petition with the Respondent the Petitioner was still legally married to one E.R.J. Any marriage with one of the spouses still legally married to a third party is a nullity. Any marriage which is not consummated for whatever reason is also a nullity. In the absence of any evidence to the contrary I am also satisfied that the marriage between the Petitioner and the Respondent has never been consummated. It is therefore a nullity and I so declare it. Consequently I grant this petition and hereby nullify the marriage between Petitioner and the Respondent.

DATED and delivered this 21st day of June 2005.

D.K. MARAGA

JUDGE