



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI
Divorce Cause 101 of 2003

C G M.....PETITIONER

Versus

M W M.....RESPONDENT

RULING

The application dated 30th June 2004, was brought under Rules 3(3) and 14(1) (3) & 4 of the Matrimonial Causes Rules, by the respondent in this divorce cause. The respondent seeks for leave to amend the Answer to Petition filed herein, in terms of the annexed draft Answer to Petition and Cross-petition.

The application is supported by the affidavit of the respondent which details the reasons for the amendment as follows:

- a) That the Answer to Petition and Cross-petition that was filed on 8th August 2003 is void for lack of a verifying affidavit.
- b) That the omission to include the verifying affidavit was inadvertent.
- c) The respondent would like to bring to the attention of the court, acts of cruelty and adultery which is necessary before the determination of this cause.

The application was opposed by the petitioner, who filed grounds of objections, which were expounded as follows:

- 1) There is no Cross-petition at all as it is not signed by the respondent, there is also no verifying affidavit, as provided for under rule 6(1) of the Matrimonial Causes Rules thus there being no valid annexures duly signed by respondent the court should not speculate on the proposed amendment. Moreover the supporting Affidavit is defective as it fails to disclose who caused the omission.
- 2) Lastly the petitioner argued that the application offends the provisions of rule 14(3) of the Matrimonial Causes Rules which require the applicants verifying affidavit which should verify the new facts only.

I have carefully considered the application, the supporting affidavit and the draft amended Answer to Petition and Cross-petition. It is correct both the drafts amended Answer to Petition and Cross-petition and the verifying affidavit are not signed by the respondent. Since these are mere drafts, it is after the leave is granted that is when the Amended Answer and Cross-petition and the verifying Affidavit may be filed and served.

I have also considered the provisions of rule 14(3) of the Matrimonial Causes which require the respondent cross-petitioner to file a verifying affidavit of the new facts alleged.

The amendment is merely sought to regularize the Answer and Cross-petition that was filed without leave of the court.

In the absence of the Amendment the respondent has no case before this court. I am inclined to allow the amendment in the interest of justice, so that the respondent can have an opportunity to ventilate her case.

I am encouraged in the respect by the fact that this amendment was caused by a bona fide omission although the applicant does not state who caused the omission. That is failure to file the verifying affidavit this could have been caused by counsel who drew the documents and filed and since this amendment has inconvenienced the petitioner, I am satisfied that that inconvenience can be compensated with costs.

I therefore grant the applicant/respondent leave to amend the Answer and Crosspetition dated 5th August 2003 to be filed and served within 21 days. The petitioner shall be at liberty to file reply to the Answer and Cross-petition within 14 days of such service. The petitioner shall have costs of this application.

It is so ordered.

Ruling read and signed on 17th December 2004.

MARTHA KOOME

JUDGE