

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI (MILIMANI LAW COURTS)
DIVORCE CAUSE NO. 175 OF 2000

M.G.D.....PETITIONER

Versus

M.D.....RESPONDENT

RULING

The application dated 30th January 2004 was brought under Rules 3(3) and 19 of the M.C. Rules seeks for leave for the respondent to amend the answer to include a cross-petition in terms of the Amended Answer and Cross Petition draft annexed to the application. The application is supported by the affidavit of the respondent which details the reasons for the Amendment as follows:

The petitioner filed a petition for Judicial Separation in October 2000 and simultaneously filed a Chamber Summons for maintenance. The Chamber Summons was heard and in a ruling delivered on 22nd August 2003. The court determined the Summons and the effect of the order was that the petitioner is not bound to cohabit with the respondent.

The parties have not cohabited since February 2000 and hence it is expedient to seek for leave to file an amended Cross Petition seeking for final orders for divorce instead of filing a fresh petition which will necessitate the party to seek for consolidation.

The amendment sought is allowed by the Matrimonial Cases Rules and also the text on Rayden on divorce 4th Edition page 229 is authoritative that a Cross-Petition for divorce can be filed in a Judicial Separation Cause.

The petitioner has not filed any replying affidavit despite the fact that the petitioner was served with the application by way of Chamber Summons and a hearing notice for this matter.

Accordingly the application is not opposed. I have carefully considered the application, the supporting affidavit and the draft amended petition and I am inclined to grant the prayers sought as it will not prejudice any of the parties. Parties having ceased cohabitation in February 2000, I am satisfied that the respondent should be allowed to amend the answer and include the cross. petition. Accordingly I allow the application dated 30th January 2004 prayer No. I. That leave to amend the Answer to include a Cross-Petition within 21 days from today. The said Amended Answer and Cross-Petition be served upon the petitioner who shall be at liberty to file a reply within 30 days of such service.

Costs of this application be in the cause.

Orders Accordingly.

MARTHA KOOME

JUDGE