



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
DIVORCE CAUSE NO.47 OF 2001

G A.....PETITIONER

VERSUS

M O ORESPONDENT

Coram: Before Hon. Justice Mwera

**Mulwa for the Petitioner
No appearance for the Respondent
Court clerk Sango**

JUDGEMENT

On 18th December 2001 the petitioner G A filed the petition herein praying for nullification of her marriage to M O O on the main ground that it was never consummated. That on marrying at the Civil Registry at Mombasa on 20th December 2000 (Exh. P1) the two never lived together as husband and wife and they had no issue of the said marriage. That while she lived in London (UK), the respondent lives at Ukunda Kenya and that the respondent should bear the costs.

The record shows that on 11-7-2002 Mulwa Nduya, a process server received and set off to serve the petition herein on the respondent. That he traced him on the eleventh floor of the Social Security House and accordingly served the petition. That the respondent accepted it but refused to acknowledge the same by signing for it.

On 6-8-2002 there was an application under Rule 29 of the Matrimonial Causes Rules (under the Matrimonial Causes Act) for the registrar's orders that the petition proceed as undefended and that was granted on 18-10-2002. The trial was set down on 3- 6-04. The petitioner testified (PW.1)

She went over what basically appears in the petition save to add that on the day of the marriage ceremony she left the country to go and take up a job in London. That she left the respondent with money so that he could follow later and then the two would thereafter live together as husband and wife. But that the respondent did not follow the petitioner to London. He disappeared and cut all links. All communication from the petitioner to M O O came to nothing. That she went to all costs and expense to no avail. That accordingly this court should annul their marriage. It was never consummated.

Having heard the petitioner this court is satisfied that a good ground to annul the marriage herein has been established. Right after the marriage ceremony the petitioner left Kenya for the U.K. and at no time did she with the respondent consummate the marriage. Central to any marriage is the fact of

consummation. This was never done in this marriage and so it cannot stand as such at all.

This court thus annuls the marriage between the two, with costs to the petitioner.

Decree nisi to issue.

Judgment accordingly.

Delivered on 17th June 2004.

J.W. MWERA

JUDGE