



**REPUBLIC OF KENYA**

**IN THE HIGH COURT AT NAIROBI**

**NULLITY CAUSE NO 69 OF 2004**

**D ..... PETITIONER**

**VERSUS**

**D..... RESPONDENT**

**JUDGMENT**

By petition filed in the High Court, Nairobi on 25.05.04, the petitioner prayed:-

- a) That the marriage celebrated between him and the respondent be declared null and void.
- b) That any other relief deemed fit may be granted.

The following facts emerge from the petitioner's pleadings and oral testimony before the Court. The petitioner is a marketing manager in [*particulars withheld*] Company Ltd Nairobi handling Electronics Division and has been so employed for the last five (5) years. He has been domiciled in Nairobi, Kenya for six (6) years.

On 01.06.03 the petitioner, then a bachelor was lawfully married to the respondent, then a spinster at Arya Samaj, Krishna Nagar, 529, K1 Kydgnai, Allahabad, India. The petitioner took time off from his employment in Nairobi to travel to Allahabad, India for purposes of the marriage. After the marriage, the petitioner cohabited with the respondent at their friend's house at 222/A/2A Preetam Nagar, Allahabad, India for one day during which the petitioner made advances to the respondent for sex but the respondent refused. No consummation of the marriage, therefore, took place during the one day's cohabitation. The respondent gave no reason for refusing to have the marriage consummated.

Thereafter the petitioner traveled back to Nairobi, Kenya to resume his duties. Subsequently the petitioner invited the respondent to join him in Kenya and she did so on 08.11.03 after the petitioner travelled to India to fetch her. When the respondent joined the petitioner in Kenya, he again made advances to her for sex but the respondent refused, again without giving any reason. All attempts by the petitioner to have sex with the respondent were rebuffed by her until February, 2004 when the respondent returned to India and she has never made any efforts to contact the petitioner since she deserted the matrimonial home in Nairobi. The petitioner's marriage to the respondent was, therefore, never consummated.

The petitioner averred that he resides at maisonette [*particulars withheld*] Nairobi, Kenya while the respondent resides at the house of her brother at [*particulars withheld*] India, in other words, the petitioner is domiciled in Kenya while the respondent is domiciled in India. The petitioner added that there have been no previous proceedings in court between the parties in respect of their marriage. Finally, the

petitioner averred that the marriage has not been consummated due to the willful refusal of the respondent to have the marriage consummated despite the petitioner's readiness and willingness to have the marriage consummated and that by reason of the respondent's aforesaid refusal, the petitioner prays for the marriage to be declared null and a void

There is in the file an affidavit of service by Anil Joshi, Advocate of Post Office Number 44582, Nairobi, Kenya that on 04.06.04 he caused service on the respondent who resides in India the petition herein, notice, affidavit and accompanying papers. These documents were sent to the respondent by way of One World Courier and were not returned uncollected. The respondent did not file appearance or answer to the petition and the petition, therefore, remains undefended.

It is curious that the respondent went through the motions of a marriage ceremony but subsequently refused to have it consummated without giving any reason the petition told this Court that he is a Hindu. However his counsel, Mr Shah said these nullity proceedings were brought under the

Matrimonial Causes Act (cap 152). Section 14 of the Matrimonial Causes Act provides, *inter alia*, as follows:

"14. (1) The following are the grounds on which a decree of nullity of marriage may be made –

(b) that the marriage had not been consummated owing to the willful refusal of the respondent to consummate the marriage".

The petitioner's petition is accompanied by the petitioner's affidavit confirming on oath that the averments contained therein are true and I have no reason to doubt this uncontroverted evidence.

I am satisfied that the petitioner's marriage to the respondent was never consummated through the willful refusal of the respondent to consummate the same and further that the respondent gave no reason for her refusal.

Accordingly, I hereby declare null and void and pronounce a decree of nullity of the marriage between the petitioner and the respondent. Decree *nisi* to issue forthwith, the same to be made absolute after expiry of 30 (thirty) days.

It is ordered.

Dated and delivered at Nairobi this 15<sup>th</sup> day of October, 2004

**B. P. KUBO**

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**JUDGE**