



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**DIVORCE CAUSE NO. 45 OF 2001**

**EDITH MARY WAMALWA.....PETITIONER**

**Versus**

**RONNIE MUTAI OPICHO.....RESPONDENT**

**RULING**

The applicant, who is also the petitioner, has filed an application under Section 39(1) Matrimonial Cases Act and Rules 4(5), 6(1) of the Matrimonial Cases Rules. The applicant is seeking for Orders:

1) The Replying to petition and Cross Petition filed on the 14th September 2001 and the answer to Petition filed on the 22nd April 2003 be struck out for reasons that the petitions are an abuse of the court process and they are fatally defective and bad in law. The application is supported by the Affidavit of Mrs. Abida Aroni Counsel for the applicant who has detailed their efforts to obtain the Registrar's certificate without success as the answer and cross petition filed by the respondent is defective. The respondent did not attend court although served nor did he file a replying affidavit.

The petition herein was filed on 8th March 2001 and served upon the respondent on 29th August 2001. The respondent's advocate filed a reply to petition and cross petition on 14th September 2001. The Registrar declined to issue a certificate as the pleadings were not in order. The respondent had filed a corespondent whom he had not served with the petition. Secondly the petition was wrongly headed as "Replying" instead of "Answer". On 22nd April 2003 the respondent filed an answer and cross petition without first obtaining the leave of the court to amend the answer. For reasons that the pleadings are not in order. The petitioner has not been able to get the Registrar's Certificate and they now apply for the said answer to be struck out.

I have looked at the provisions of the Matrimonial Cases Rules, the respondent needed leave of the court to amend the answer to the petition after it had been served upon the petitioner. So, are the supplemental petition that the respondent filed on 22nd April 2003.

Accordingly I allow the petitioner's prayer No. 1 of the Chamber Summons dated 5th November 2003.

As regards prayer No.2 that seeks for an order that the petition do proceed as undefended, I decline to grant as the cause should be certified by the Deputy Registrar.

Costs of this application be in the cause.

**Ruling read and signed on 30th January, 2003.**

**MARTHA KOOME**

**JUDGE**