

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

DIVORCE CAUSE NO. 45 OF 2001

E M W PETITIONER

AND

R M O RESPONDENT

R U L I N G

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 Reply 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 reported by the Affidavit of Mrs Abida Aroni counsel for the Applicant who has detailed their efforts to obtain the /// certificate without success as the cross petitions 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 8/3/01 and served upon the Respondent's Advocate filed a Reply to petition and cross petition on 14/9/01. The Respondent deceived to /// as the pleadings were not in order. The Respondent had // a co-respondent whom he had not served with the petition . Secondly the petition was wrongly //as "reply" instead of "Answer". On 22/4/03 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 Respondent So, are the supplemental petition that the respondent filed on 22/4/03. Accordingly I allow the respondent's prayer no. 1 of the Chamber summons dated 5/11/03. As regards prayer no. 2 that seeks for an order that the petition proceed as undefended. I decline to grant as the case should be certified by the Deputy Registrar.

Costs of this application be in the cause.

Ruling read and signed on 30/1/03.

M. KOOME

JUDGE