



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA

DIVORCE CAUSE NO. 19 OF 2003 (O.S)
IN THE MATTER OF: A PROPOSED PETITION BY:-

WINNIE WANJIRU MUTURI APPLICANT

FOR DISSOLUTION OF HER MARRIAGE WITH

RUDOLF KARL DIESCH RESPONDENT

R U L I N G

The application before me is an Ex-parte Originating Summons filed on 30th May 2003 by WINNIE WANJIRU MUTURI (hereinafter referred to as “the applicant”) through the firm of M/S GUNGA MWINGA & CO. ADVOCATES in which the applicant seeks leave of the court to file a Petition for dissolution of her marriage with one RUDOLF KARL DIESCH (hereinafter referred to as “the Respondent”) solemnized on the 13th October 2000, notwithstanding that three years have not lapsed since the celebration of the said marriage.

Grounds in support of this application are that, since the celebration of this marriage the Respondent has occasioned the applicant extreme and exceptional hardship and the Respondent has since deserted the matrimonial home without any explanation.

The above grounds have been verified by the applicant in her affidavit where she has deponed that barely a week after the celebration of the marriage the Respondent abandoned her in Kenya and travelled to Germany, he came back to Kenya in August 2001 whereupon he began to despise her, calling her names and vowed never to live with her; that the Respondent left for Germany again in September 2001 without notice and has not come to her again. She finally deponed that the subsistence of this marriage continues to torture and mentally disturb her.

This summons was served upon the Respondent on the 30th May 2003 at Mombasa Beach Hotel by Mr. Fredric Maundu, a private process server. An affidavit of service was filed on 9th June 2003. No Replying affidavit or grounds in opposition have been filed by the Respondent.

It is statutorily provided in Section 6(1) of the Matrimonial Causes Act Cap 152 Laws of Kenya that no petition for divorce shall be presented to the court unless at the date of the presentation of the petition three years have passed since the date of marriage. Provided that a Judge may, upon application being made to him in accordance with the Rules made under this Act, allow a petition to be presented before three years have passed on the ground that the case is one of exceptional hardship suffered by the Petitioner/ Applicant or of exceptional depravity on the part of the Respondent.

The applicant has annexed to her verifying and supporting affidavit a letter dated the 20th September 2001 which the Respondent wrote to her and which conclusively is a testimony of the

irreversible end of this marriage. This letter reads:-

“RUDOLF KARL DIESCH

GERBERSIR 15,

63065 OFFENBACH A. MAIN

GERMANY .

TO: WINNIE WANJIRU MUTURI,

P.O. BOX 93050,

MOMBASA

20/09/2001

Dear Winnie,

It is with deep regret that I have to write to you as follows: -

As you are well aware, we got married on the 13 th October 2000. I appreciate for having had you as my wife for the period of time.

Unfortunately things have not been alright between us and we have had some domestic misunderstanding ever since we got married. It is therefore with deep sorrow that I now write to inform you that from today henceforth, I do not want anything to do with you and that you should desist from using my name in any matter or any form of document. I would also like you to omit my name in your Kenyan Passport with immediate effect.

Kindly be further advised that you should also desist from visiting my premises whenever I am visiting in Kenya nor even bother corresponding with me any further.

TAKE NOTE that should you go against what I have stated hereinabove you will be to blame for the legal and other steps that I will take against you.

Yours in regret,

RUDOLF KARL DIESCH”

A marriage is a Voluntary union between a man and a woman and in exclusion of all others. With particular reference to this cause, the applicant accepted the Respondent as her lawful husband and expected the Respondent to treat her with loving care and to make adequate provision for her.

Instead the Respondent, in the first year of such marriage communicated to the applicant his intentions expressed in the above letter.

In my view, therefore, the applicant's pleas that the subsistence of this marriage continue to torture and mentally disturb her find favour with me.

The applicant has made out case and is entitled to file a petition for divorce before the expiry of three years from date of their marriage. This application is granted as prayed. The petition for divorce be filed within forty five days from today. I award the applicant costs.

It is so ordered.

Dated and delivered at Mombasa this 12 th June 2003.

A. G. A. ETYANG

JUDGE