



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MOMBASA**  
**DIVORCE CAUSE NO.46 OF 2000**

**A E M.....PETITIONER**

**V E R S U S**

**A M B.....RESPONDENT**

**J U D G M E N T**

This matrimonial cause was drawn and filed by the firm of Nzamba Kitonga Advocates on 10th November, 2000. The file records show that on 7.12.2001 this file was placed before the Deputy Registrar for directions. Mr. Mulei from Nzamba Kitonga Advocates requested for a certificate that pleadings were in order and requested for a hearing date as well. The Deputy Registrar certified that the pleadings were in order and allowed the matter to be listed for a hearing for one day.

The marriage was entered into on 30.9.98. These divorce proceedings were filed on 10.11.2000. The period between the two events is approximately one year one and a half months. Section 6(1) of Matrimonial Causes Act (Cap.152) under which the remedy is sought in this case is available provides 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. The only exception to this is provided by 6(1) proviso of the said Act which states that proceedings for divorce may be brought earlier than three years with the leave of this court.

As I understand it, such leave can only be obtained when a formal application is deliberately made for that specific purpose and is granted upon special grounds. I have perused this file carefully but I do not see any such proceedings having been made nor such leave having been granted. The court's reasonable presumption, therefore, is that no such application was made and no such leave was granted. During the prosecution of this proceeding the court raised the issue and Mr. Mulei deliberately informed the court that leave was granted to file this matter. Mr. Mulei, from the records in this file, conducted all the relevant proceedings in this file and so must have known that he was deliberately misleading this court. It can, therefore, be reasonably presumed that he did so to gain an advantage of some kind, in this case, to get a judgment in favour of his client. He erred in doing so and should expect to bear the consequences of his deliberate act. As counsel and officer of this honourable court, he is expected to conduct himself honourably. It was his duty and obligation to disclose the fact that no leave was granted. He did not do so. Instead he deliberately misled the court which as a result wasted its time and resources to hear the matter to the end.

As things stand, these proceedings were filed not only prematurely, but without leave of this court. The

proceedings are null and void ab initio. The exercise from the beginning to the end has been an exercise in futility, thanks to Mr. Mulei.

The end result is that the petition herein and the proceedings to date are struck out. The Petitioner is at liberty to start the exercise afresh. Mr. Mulei owes this court an instant explanation and an apology.

**Dated and delivered on this 19th day of February, 2002.**

**D.A. ONYANCHA**

**J U D G E**

**Mr. Kalama - for Petitioner**

**Respondent was in person - Not present.**