

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

DIVORCE CAUSE NO. 4 OF 2000

Z I S PETITIONER

VERSUS

E M U I RESPONDENT

J U D G E M E N T

The petitioner herein, Z I S, sought an order of this court to dissolve her marriage to E M I, the respondent, on the grounds of the respondent's refusal to consummate the marriage.

The respondent was served with the petition, and he acknowledged service, but thereafter did not file any answer in reply.

The petitioner applied for the Registrar's certificate in compliance with Rule 29 of the Matrimonial Causes Act. The same was issued by the Senior Deputy Registrar, who certified the proceedings to be in order and directed that this hearing of the petition should proceed in Nairobi for one day as an undefended cause.

In court during the hearing of the divorce petition, the petitioner testified that she got married to the respondent on 3rd July, 1996 at the Attorney General's chambers in Nairobi.

She recalled that they both went to the Attorney General's chambers at about 10.00 a.m. on 3.7.96 accompanied by their witnesses. The two of them went through the ceremony of marriage, and then treated each other to lunch.

The petitioner who was a student at Kenyatta University went back to college and the respondent who was a major in the army, went back to the army barracks. They did not see each other again that day, and did not spend the night together on that day or any other day. The marriage was not consummated. The petitioner subsequently discovered that the respondent had a woman friend with whom he had had a baby boy. The petitioner questioned the respondent about this. At first he denied, but later he admitted.

The petitioner was angry when she discovered about the other woman. The respondent stopped coming to visit her at college and she too did not visit him. The petitioner revealed that she did not tell her parents about her marriage to the respondent, at the time. She nevertheless revealed the information to her mother about 3 years later. Her mother was very angry with her for what she did.

The petitioner completed her studies, started working and now she lives with her mother.

Both the petitioner and the respondent are citizens of Kenya and they also reside in Kenya. She confirmed that she has not brought the petition in collusion with the respondent. She also confirmed that there has not been any proceedings regarding this marriage before. She asked for the dissolution of the marriage, saying that she lastly saw the respondent in January, 1997.

I have considered the evidence adduced by the petitioner which evidence was not opposed, as the respondent did not file any answer, and again, did not appear in court to give evidence. The evidence showed quite clearly that the marriage between the petitioner and the respondent was not consummated, in these circumstances, I find that there was no marriage, other than vows made at the Attorney General's office.

A marriage is not just made by vows, a marriage must be consummated. This one was not, so I have no hesitation in making an order dissolving the marriage between Z I S and E M I, solemnized on 3rd July, 1996 at the Attorney General's chambers in Nairobi.

I direct that the decree nisi do issue straight away, and the same will become absolute within a period of one month from today.

Dated at Nairobi this 16th day of May, 2002.

JOYCE ALUOCH

HIGH COURT JUDGE