



N THE HIGH COURT OF KENYA AT NAIROBI

**DIVORCE CAUSE NO. 42 OF 2001**

H C..... PETITIONER

AND

J M R ..... RESPONDENT

**JUDGMENT**

I have listened to and considered what I have been told and have read during the hearing of this petition to declare the marriage between the petitioner H C and the Respondent J M R a nullity on the ground that the petitioner did not knowingly and voluntarily enter into and/or consent to a marriage union with the Respondent and that the petitioner did not know she was signing a marriage certificate, having been told by the Respondent that they were going to a lawyer's office to sign an affidavit and the said lawyer not having pronounced the Respondent and the Petitioner as husband and wife and that the two who had previously been boy and girl friends only, never subsequently cohabited as husband and wife and that the purported marriage has never been consummated although the friendship between the two flourished for quite sometime after the event of signatures at the lawyer's office. The petitioner produced what looks like a genuine original certificate of marriage No. 72056 dated 19th December 1997 to the effect that the marriage was solemnized at Superintendent Registrar's Office in the Rift Valley at Nakuru by Registrar C.I. Mudinyu and witnessed by one EN M and B C R when the Petitioner and the Respondent are said to have been residing at Gilgil.

The Petitioner acknowledged her signature on the certificate and explains that by then she was a medical student taking a Clinical Officer's Course at the Medical Training College Nakuru while the Respondent was a military officer at Gilgil. The Petitioner said she had been told that she would sign the affidavit so that the Respondent could be exempted from going for military peace keeping mission in other countries.

I note that not only has the Respondent not come to oppose this petition but material witnesses like the Registrar C.I. Mudinyu, E N M, B C R as well as the lawyer in whose office the Petitioner and the Respondent went, have not been brought to this court to give evidence. The Petitioner told the court she knew E N M and B C R and saw them outside the lawyer's office as she and the Respondent were leaving the lawyer's office.

The Petitioner said they both signed in a book. It means this certificate produced as an exhibit was still in its book. But as she signed it, just in front of her eyes were words "Marriage" and "Certificate of Marriage" written in big letters and very conspicuous with the words "REPUBLIC OF KENYA" prominently written at the top. The Petitioner claims she did not see all those.

The Respondent visited parents of the Petitioner in the presence of the Petitioner but she refuses to accept it was because of the Petitioner's and the Respondent's marriage. Witnesses from her home have not been called.

In this matter, therefore, I have the word of the Petitioner only. It may be a case of a genuinely married person who has now changed her mind and wants to move out of the marriage.

I feel the Petitioner should have brought the people I have referred to or some of them to support her case. As things stand now not only do I hold the view that it is unsafe to rely upon the evidence now before me to grant the Petitioner's prayers but I also hold the view that the evidence is inadequate.

Accordingly the Petitioner's petition herein dated 2nd March 2001 be and is hereby dismissed with no

order as to costs.

Dated this 9th day of May 2002.

**J.M. KHAMONI**

**JUDGE**