

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI MILIMNAI LAW COURTS
DIVORCE CAUSE NO. 5 OF 2001

P M PETITIONER

V E R S U S

F M M RESPONDENT

R U L I N G

I have before me an application to determine the validity of the petition filed in contravention of Section 6 (1) of the Matrimonial Causes Rules.

The point was argued in limine and by consent of both the counsel.

The facts are not in dispute. The parties celebrated a marriage under Muslim Law on 16th July, 1962. Thereafter the said marriage was converted into the marriage under the marriage Act which stipulates a monogamous marriage. Mr. Musyoka concedes that the marriage in subsistence is under the Marriage Act and that the provisions of the Matrimonial Causes Act apply to the marriage between the parties. He also argues that the petition is filed before the completion of three years of marriage which was ceremonised on 24th July, 1999. He also argues that no leave as stipulated under the proviso to Section 6 (1) of the Act and Rule 2 of the Rules is applied for or granted.

What is contended by Mr. Musyoka is that the court should look into the rationale behind enactment of the provisions of Section 6 which according to him was to deter or discourage the newly married couple to rush to seek divorce. The parties are married since 1997 and thus so far as this marriage is concerned the court should not rely on the provisions of Section 6 or interpret the same strictly.

If I take up that rationale further then also I cannot agree with Mr. Musyoka as the parties have agreed or vowed to enter into a monogamous marriage as against the vagaries of polygamous marriage. The stability and expectation of the new marriage also should not be snapped by the parties without following the proposed rationale of the provision.

Be that as it may, what I have before me is a very clear and absolutely unambiguous provision of Law clothed in a mandatory language and which gives the party recourse to overcome the mandatory nature thereof.

The petitioner has not bothered to follow the provisions of the said law and cannot expect this court to grant him a nod of approval.

I therefore uphold the preliminary objection and find that the petition as filed is incompetent and is therefore struck out with costs.

Dated and delivered at Nairobi this 29th day of January, 2001.

K. H. RAWAL

J U D G E

