

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

MISCELLANEOUS DIVORCE CAUSE NO. 14 OF 2001 (OS)

**IN THE MATTER OF A PROPOSED PETITION BY J K FOR THE DISSOLUTION OF HIS
MARRIAGE WITH T M H**

RULING

The application by Originating Summons is brought under Section 6 of the Matrimonial Causes Act and Rule 12 (II) of the Matrimonial Causes Rules. It is supported by an Affidavit sworn by the applicant J K on 21st March 2000. He seeks leave of the court to file and Petition for a Divorce notwithstanding that three years have not lapsed since the celebration of the said marriage.

The applicant cites extreme and exceptional hardship occasioned upon him by his wife who has deserted the matrimonial home on several occasions since the celebration of the marriage for as long as three months without any explanation. She has continued to harass him over some property Registered in their joint names known as [particulars withheld] which she claims he had bought for her and wants it back.

The applicant however fears for his life now because his wife after one of those absences returned and informed him she had visited a very strong Witch doctor who would bewitch him making him mad and has continued to threaten to cause him actual bodily harm. He finds her threats real as in December 1999 he was attacked by a group of thugs who gained access into the house using keys and even opened the safe using a set of keys. Later his wife told him she was behind the attack and she would continue and has threatened to have him killed. The incidence was reported to the police but she was released after a brief arrest.

The institution of a marriage is one that should not be interfered with even by the courts without good reason. The parties must try to reconcile when problems arise. However, the applicant says this cannot work as all attempts to speak to his wife have been met with extreme hostility. He now lives in fear for his dear life after receiving death threats and being attacked by thugs which the wife claims responsibility. It is unfortunate that such acts can be committed by one human being towards another. I have no reason doubt that the petitioner is undergoing a lot of hardship and fear. For the reasons given, I shall grant the leave to file a petition for Divorce notwithstanding the three year statutory period. The application shall therefore succeed.

Dated at Mombasa this 1st August 2001.

P.M. TUTUI

COMMISSIONER OF ASSIZE