

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

H.C.C DIVORCE CASE NO.116 OF 1995

TMG..... PETITIONER

VERSUS

MEHS..... RESPONDENT

R U L I N G

The Petitioner and the Respondent got married at BERNAU in GERMAN in 1964. They moved to Kenya in 1965 and lived in Isiolo, Meru and Nairobi. They were blessed with two issues of the marriage who unfortunately died through road accident in Germany in 1989 and 1992 respectively. The respondent deserted the Petitioner in 1987 and went back to her home in Germany where she is now documented, and she has no intention of coming back. The Petitioner filed a petition for divorce in Nairobi on 5/10/1995 and served the respondent through substituted service.

This application by way of chamber summons brought under O.XXVII rule 45 of the Civil Procedure Rules and rules 25 (3) of the Matrimonial Cause Rules for orders:-

- (1) **THAT** this Honourable court do issue a commission for the examination of the Respondent MEHS who is resident outside the Jurisdiction of this court at (PARTICULARS WITHELD).
- (2) **THAT** leave be granted to the Respondent MEHS to adduce and prove her evidence in respect of the facts and allegations contained in the Amended Petition Answer to the Amended Petition and cross-petition under the Commission so issued by this court.
- (3) **THAT** the said commission for the examination of the respondent be issued to the **AMTSGERICHT WIESBADEN COURT** and on to **ATTORNEY LAVS. H. MENZEL** in the Republic of Germany and the court be served upon the said court and or Attorney by Registered post.
- (4) **THAT** the Commission and evidence taken there under be forwarded to this Honourable court within 45 days of the date of the order issuing the Commission and the same to form part of the record of the suit.

This application is grounded on the following facts:-

- (a) **THAT** the Resident Monika Helene resides in the Republic of Germany and is unable to travel to Kenya for reasons that she is sick and is impecunious.
- (b) **THAT** the Respondent's evidence regarding the issues raised in the Petition, answer to the Petition and the cross-petition is crucial and necessary and she should be given a chance to be heard.

Counsel for the applicant produced a letter from the respondents' doctor confirming that she is sick and she is under the attention of her personal doctor. She also produced documentary evidence to prove that the respondent is of meager income and that she cannot afford an air ticket to Kenya. The application is opposed on the ground that there were no annexures to prove her income.

I have considered the application and I am satisfied that this is a suitable case where orders sought ought

to be granted.

The application is allowed and the order sought in the chambers summons dated 6/12/1999, granted.
Order accordingly.

Dated and delivered at Nairobi this 28th day of June, 2000

J.L.A. OSIEMO

JUDGE