



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT EMBU**

**MISC. CIVIL CASE NO. E29 OF 2021**

**EM .....APPLICANT**

**VERSUS**

**SM.....RESPONDENT**

**RULING**

1. This ruling is in relation to an ex-parte notice of motion dated 24.05.2021 and wherein the applicant essentially seeks for orders that this Honourable Court be pleased to recognize and adopt the dissolution of marriage decree given to the applicant and the respondent in the Circuit Court of Shelby, Tennessee in the United States of America before a single judge KSR on 8.01.2013. She further prayed for costs of the application.

2. The application is premised on the grounds on its face and its supported by the applicant's affidavit and in a nutshell, the applicant's case is that she got married to the respondent on 19.07.2002 under the then Marriage Act Cap 150 Laws of Kenya and after which they moved to the United States of America. That, however, for irreconcilable differences the said marriage was dissolved on 8.01.2013 by a single judge (Justice KSR) and a final decree issued. That she needs to contract another marriage which ceremony is set for July 2021 and further that the recognition of a decree issued by a foreign court of competent jurisdiction is a mandatory requirement under Kenyan law in order for it to be registered with the registrar of marriages.

3. The Respondent has so far not taken part in the instant proceedings and furthermore, no evidence has been placed before this Court to show that he was served.

4. At the hearing of the application, Mr. Mugambi for the applicant argued the application orally and wherein he relied on the grounds on the face of the application and the supporting affidavit.

5. I have considered the application herein and it is my considered view that despite the same being ex-parte, its merits or otherwise ought to be considered. The issue therefore is whether the instant application is merited.

6. As I have noted, the applicant seeks for orders that this Honourable Court be pleased to recognize and adopt the dissolution of marriage decree given to her and the respondent in the Circuit Court of Shelby, Tennessee in the United States of America before a single judge KSR on 8.01.2013.

7. The application is brought under section 67 of the Marriage Act. The said section permits recognition of foreign judgments and decrees in Kenya. The said section provides:

***“where a foreign court has granted a decree in matrimonial proceedings whether arising out of a marriage celebrated in Kenya or elsewhere, that decree shall be recognized in Kenya if:***

***(a) Either party is domiciled in the country where that court has jurisdiction or had been ordinarily resident in Kenya for at least two years immediately preceding the date of institution of proceedings.***

***(b) Being a decree of annulment, divorce or separation, it is effective in the country of domicile of the parties or either of them”.***

8. Under this provision, the need for reciprocity in the recognition and registration of foreign judgment as provided under the foreign judgments (Reciprocal Enforcement Act) 1984 is not mandatory.

9. From the wording of Section 67 above quoted, it envisages recognition of all foreign judgments regarding matrimonial proceedings without the need to demonstrate reciprocity as long as there is proof that either party was domiciled in the foreign country where that decree or order was made and that that court had jurisdiction. Secondly, that the decree of annulment or divorce or separation, should be effective in

the country of domicile.

10. In the instant case, there is nothing on record to the effect that the court which made the decree in relation to the marriage herein has no jurisdiction. It therefore means and the same can be presumed that the court which pronounced the divorce between the parties herein had jurisdiction over the same.

11. The applicant deposed that they celebrated their marriage in Kenya on 19.07.2002 and moved to the United States soon thereafter and their marriage was dissolved on 8.01.2013 and a final decree issued. It therefore means that the parties herein were domiciled in the United States of America for a period more than two years as recognized by law. As such, the said divorce is recognizable in Kenya and as such the application herein is merited.

12. The application is allowed as prayed.

13. It is so ordered.

**DELIVERED, DATED AND SIGNED AT EMBU THIS 21TH JULY DAY OF 2021.**

**L. NJUGUNA**

**JUDGE**

.....for the Appellant

.....for the Respondent