



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**MISCELLANEOUS APPLICATION NO. 147 OF 2019**

**IN THE MATTER OF A DECREE OF DISSOLUTION OF MARRIAGE ISSUED FROM THE FAYETTE FAMILY COURT OF THE COMMONWEALTH OF KENTUCKY U.S.A.**

**AND**

**IN THE MATTER OF A DECREE OF SEPARATION & PROPERTY SETTLEMENT AGREEMENT REGISTERED AT THE FAYETTE FAMILY COURT OF THE COMMONWEALTH OF KENTUCKY U.S.A.**

**AMM.....APPLICANT**

**- VS -**

**LAM .....RESPONDENT**

**RULING**

1. The exparte Notice of Motion dated 14.8.2019 seeking the following orders:

**i. THAT the Honourable Court do recognize and adopt the decree of dissolution of marriage issued on 22.10.2018 to the applicant and the respondent at the Fayette Family Court in the Commonwealth of Kentucky USA in Case No. 18-CI-3072.**

**ii. THAT the Honourable Court do recognize and adopt the Separation and Property Settlement Agreement dated on 16.10.2018 recorded as part of the dissolution of the said marriage at the Fayette Family Court in the Commonwealth of Kentucky USA in Case No. 18-CI-3072.**

2. The application is based on the grounds on the face of it and supported by the Affidavit of AMM (the Applicant herein) sworn on even date.

3. The applicant is a dual citizen of USA and Kenya currently resident in Lexington, Kentucky USA since 1989.

4. The Applicant got married to LAM who is a USA Citizen on 13.6.1992 at FRANKLIN COUNTY KENTUCKY USA.

5. The marriage was dissolved on 22.10.2018 following divorce proceedings after the parties separated in August 2016 after the marriage broke down irretrievably.

6. Following the divorce proceedings at the Family Court in Commonwealth of Kentucky, the parties entered into a separation and property settlement agreement dated 16.10.2018 which settled their matrimonial properties.

7. The Applicant now seeks to have this court adopt the decree of dissolution of marriage issued by the Fayette Family Court in the Commonwealth of Kentucky USA and recognized by the Courts of Kenya.

8. The Property settlement agreement includes a house at Windsor Park Estate in Nairobi that is registered in both the names of the Applicant and LAM.

9. The Application is brought under **section 67** of the Marriage Act No. 24 of 2014 which states as follows:

**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.**

10. Justice Musyoka had this to say while handling a similar case in which he recognized foreign judgment entered in U.S.A. in the case of **M.N.M vs PNM (2016) eKLR**,

**“Foreign annulments and dissolution of marriages are now registrable under Section 61 of the Marriage Act, 2014. However, unlike the provisions in the foreign judgments (reciprocal enforcement) Act, which envisages adoption of such orders by the courts, the registration envisioned in Section 61 of the Marriage Act 2014 is by the registrar of marriages”.**

The Honourable court went further to say:

**“...it was suggested that foreign judgments in matrimonial cause are not recognized in Kenya. That cannot be the correct position”.**

11. I find that foreign decrees are recognized in Kenya under Section 67 of the Marriage Act No. 4 of 2014 and I accordingly allow the Application dated 14.8.2019 in the following terms:

**i. THAT the decree of dissolution of marriage issued by the Fayette Family Court in the Commonwealth of Kentucky USA in case No. 18-CI-3072 on 22.10.2018 be and is hereby adopted as the decree of this court.**

**ii. THAT the separation and Property Settlement Agreement recorded as part of the dissolution of the said marriage dated 16.10.2018 be and is hereby recognized and adopted as the order of this court.**

Orders to issue accordingly.

**DELIVERED, DATED AND SIGNED IN OPEN COURT THIS 1<sup>ST</sup> DAY OF NOVEMBER, 2019**

**ASENATH ONGERI**

**JUDGE OF THE HIGH COURT OF KENYA, NAIROBI.**