



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MOMBASA
FAMILY DIVISION
DIVORCE CAUSE NO. 17 OF 2016

M J T MPETITIONER

VERSUS

Z N KRESPONDENT

JUDGMENT

1. M J T M, the Petitioner herein married Z N K the Respondent herein on 3.10.15 in Mombasa. **The Petitioner** lives in Mombasa while the Respondent is a resident of the United Kingdom.
2. The Petitioner has filed the Petition herein dated 29.4.16, seeking the nullification of his marriage to the Respondent. The ground upon which the Petitioner seeks nullification of the marriage is non consummation of the same. The Respondent was duly served with both the Petition and Notice to Appear but did not file an Appearance. The matter therefore proceeded as undefended.
3. At the hearing, the Petitioner testified that he married the Respondent on 3.10.15. The marriage was conducted at his home in Mombasa. They were issued with a marriage certificate, a certified copy of which bearing serial number [particulars withheld], was produced. The agreement was that the Respondent would stay with the Petitioner in Mombasa upon the marriage. The Respondent however wanted the Petitioner to go with her to the United Kingdom. Following the marriage, a day after the marriage was solemnized the Respondent returned to the United Kingdom. The marriage was therefore not consummated. All efforts by the Petitioner and the Respondent's father to persuade her to change her mind so that the marriage would work were fruitless. The Petitioner prayed that the Court declare the marriage null and void.
4. As stated earlier, the matter is undefended. The evidence of the Petitioner therefore remains uncontroverted in all material respects. This court has no reason to doubt the veracity of the Petitioner's testimony.
5. Section 73(1)(a) of the Marriage Act, 2014 provides that

“73(1) A party to a marriage may petition the court to annul the marriage on the ground that -

(a) The marriage has not been consummated since its celebration.”

Non-consummation of a marriage provides a valid ground for the nullification of that marriage. The marriage between the Petitioner and the Respondent has not been consummated since its celebration. Further Section 73(2)(a) provides that

“73(2) The court shall only grant a decree of annulment if-

(a) The petition is made within one year of the celebration of the marriage.”

6. The marriage between the Petitioner and the Respondent was solemnized on 3.10.15. The Petition was filed in Court 6 months later on 29.4.16, well within the statutory period of one year of the celebration of the marriage.

7. This Petition is allowed. Accordingly, I pronounce a decree of nullity and order that the marriage between the Petitioner and the Respondent solemnised in Mombasa on 3.10.15 be and is hereby annulled. Decree of nullification to issue forthwith. There shall be no order as to costs.

DATED, SIGNED and DELIVERED in MOMBASA this 3rd day of February, 2017

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M. THANDE

JUDGE

In the presence of: -

..... **for the Petitioner**

..... **for the Respondent**

..... **Court Assistant**