



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MOMBASA
FAMILY DIVISION
Civil Suit No. 28 of 2014

Z N A M E.....PETITIONER

VERSUS

H A N S.....RESPONDENT

JUDGMENT

1. The Petitioner **Z N A M E** has filed this Petition seeking the nullification of her marriage to the Respondent **H A N S**. The Respondent was duly served with both the Petition and Notice to Appear. Though the Respondent filed an acknowledgement of service filed on 3.7.14, he did not file an Answer to the Petition. The matter therefore proceeded as undefended.

2. At the hearing, the Respondent was not present in Court though he was represented by counsel. Petitioner testified that she married the Respondent on 6.9.13 at the Registrar's Office in Mombasa. The certified copy of the marriage certificate serial number [Particulars Withheld] is sufficient proof of the fact of the marriage. In her evidence, the Petitioner stated that on 7.9.13, a day after the marriage, the Respondent took off to Nairobi and then to Australia where he remains to date; that the marriage was not consummated. She prayed that the Court declare the marriage null and void.

3. As stated earlier the Respondent filed no response to this Petition. Counsel for the Respondent though present at the hearing chose not to ask the Petitioner any questions. The Petitioner's claim that her marriage to the Respondent was never consummated has not been disputed. 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.

4. 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.”

The marriage between the Petitioner and the Respondent was solemnized on 6.9.13. The Petition was filed in Court on 7.4.14, well within the statutory period of one year of the celebration of the marriage.

5. This Petition herein is allowed. Accordingly, I pronounce a decree of nullity and order that the marriage between the Petitioner and the Respondent solemnised at the Registrar's Office in Mombasa on 6.9.13 be and is hereby annulled. Decree *nisi* to issue and the same to be made absolute within 30 days. There shall be no order as to costs.

DATED, SIGNED and DELIVERED in MOMBASA this 9th day of FEBRUARY, 2016.

M. THANDE

JUDGE

In the presence of: -

..... **for the Applicant**

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

..... **Court Assistant**