



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MALINDI**  
**DIVORCE CAUSE NO. 15 OF 2015**

**E B ..... PETITIONER**

**VERSUS**

**S M S ..... RESPONDENT**

**JUDGEMENT**

The petitioner and the respondent got married on the 11<sup>th</sup> August, 2015 before the Registrar of Marriages in Malindi Kenya. The petitioner is an Italian citizen while the respondent is a Kenyan. By the time of marriage, the petitioner was 47 years old while the respondent was 25 years old. The petitioner filed this petition on 17<sup>th</sup> December, 2015 seeking to have the marriage annulled. The respondent was served with the petition but did not reply to it neither did she attend court to rebut the allegations made by the petitioner.

The main reason by the petitioner's request to annul the marriage is that respondent committed adultery and in the process conceived a child with another man. After the marriage the petitioner went to Italy on 18<sup>th</sup> August, 2015. While there he started receiving strange calls from a man yet it was only his wife who had his contacts in Italy. Another person by the name I contacted him and informed him that the respondent was pregnant. While in Italy he started receiving photos on his phone showing the respondent being pregnant. The photos were sent to him showing how the pregnancy was growing. He confronted the respondent who admitted that she was pregnant and the child was not that of the petitioner. Other photos were sent showing that the respondent had delivered in hospital with the father of the child beside her hospital bed. It is the petitioner's evidence that the respondent informed him that she took some medicine so that she could not get tied during the delivery. The child died a few days after the delivery.

According to the petitioner, Bit appears that the respondent was pregnant before they got married. He used to send her money while he was in Italy. He has now discovered that the respondent was interested in his money and there was no love between them. Some messages were sent by the man asking him to send them some money. It was like the respondent and her boyfriend were doing business with him. Before the marriage he could not know that the respondent had other relationships. He met the respondent in 2012 when he visited Watamu where the respondent reside. Whenever he was in Kenya he would meet her. He proposed to marry her and she accepted. He now prays that the marriage be annulled.

The marriage between the parties was solemnized on 11<sup>th</sup> August, 2015. The petition was filed on 17<sup>th</sup> December, 2015. This is a period of less than five months. The petition is one of annulment of a marriage and not one seeking divorce. Section 73 of the Marriage Act provides for grounds for

annulment of marriage. The section states as follows: -

- 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;**
  - b) At the time of the marriage and without the knowledge of either party, the parties were in a prohibited relationship;**
  - c) In the case of a monogamous marriage, at the time of the marriage one of the parties was married to another person;**
  - d) The petitioner's consent was not freely given;**
  - e) A party to the marriage was absent at the time of the celebration of the marriage;**
  - f) At the time of the marriage and without the knowledge of the husband, the wife is pregnant and that the husband is not responsible for the pregnancy; or**
  - g) At the time of the marriage and without the knowledge of the petitioner, the other party suffers recurrent bouts of insanity.**
- 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;**
  - b) at the date of the marriage and regarding subsections (1) (b) and (c), the petitioner was ignorant of the facts alleged in the petition; and**
  - c) the marriage has not been consummated since the petition was made to the court.**

Under the provision of section 73 of the Marriage Act a petition for annulment of marriage can be made within one year of the celebration of the marriage. It is clear from the evidence that the petitioner was ignorant of the respondent's behavior. The petitioner has annexed correspondence between himself and other people in Kenya through face book and whatsapp messages and it is clear that the respondent was having an affair with another man whose photograph and name is given. It is also established that the respondent opened a second face book account with another name so that the petitioner could not access it. She even blocked the petitioner from accessing that account.

Under section 75 of the Marriage Act when a marriage is annulled by a decree absolute it shall be deemed that the parties had never married. The marriage lasted for less than two weeks since the petitioner travelled to Italy on 19<sup>th</sup> August, 2015. The petition was prepared in Italy and notarized there. From the time the petitioner traveled to Italy after the marriage to the time of filing of the petition the parties never met again. I am satisfied that the petitioner has proved his case against the respondent. Under section 73 (f) when the wife becomes pregnant and the husband is not responsible for the pregnancy the marriage can be annulled. This is the situation in this case. The respondent became pregnant and the petitioner is not responsible for that pregnancy.

In the end I do find that the petition has provided enough evidence warranting the annulment of the marriage. The marriage between the petitioner and the respondent is hereby annulled. I do find that a decree absolute shall be the only necessary order to grant as there is no hope of reconciliation. A decree absolute to issue. Each party shall meet his/her own costs.

**Dated and delivered in Malindi this 5<sup>th</sup> day of October, 2016.**

**S.J. CHITEMBWE**

**JUDGE**