

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

FAMILY DIVISION

MISCELLANEOUS APPLICATION NO. 23 OF 2015

R M P.....APPLICANT

VERSUS

N D P.....RESPONDENT

RULING

1. Under **section 6(1)** of the **Matrimonial Causes Act (Cap 162 (now repealed))**:-

“No petition for divorce shall be presented to the court unless at the date of the presentation of the petition three years have passed since the date of marriage:-

Provided that a judge of the court may, upon application being made to him in accordance with the rules made under this Act, allow a petition to be presented before three years have passed on the ground that the case is one of exceptional hardship suffered by the petitioner or of exceptional depravity on the part of the respondent”

2. The applicant and the respondent got married on 7th April 2014 under the **Marriage Act (Cap 150, now repealed)** in Nairobi. This was an arranged marriage. The parties did not know each other before. The applicant’s previous wife had died leaving him with a son who is now about 17. The respondent had a husband who had died. She was left with a daughter. Each of these parties brought his/her child into the marriage. The couple lived together for about eight months, up to 11th December 2014, when they separated.

3. The applicant states in his application that they lived well together for only a month before problems begun. The respondent did not like his son, mother, sister and friends. She kept complaining about them. She would abuse him and threaten to fight in front of his friends. Reconciliation sessions were held but nothing useful was yielded. Since she left there has been no communication. On 17th February 2015 the applicant filed this application seeking to be allowed to file a petition for the dissolution of the marriage before three years were over.

4. The respondent opposed the application by filing a replying affidavit to deny that she was the kind of person that the applicant had depicted. She stated that if there were quarrels they were part of the process of the marriage settling down. She agreed that there had been reconciliation meetings, but denied that there was any major problem with the marriage. Lastly, she stated that:-

“11..... I am extremely sorry if I have hurt feelings or caused any hardships to the petitioner there is always possibility of reconciliation and matters can be sorted out with mutual understanding.”

She denied that she hated the applicant, his son, family members or his friends.

5. The applicant testified. The respondent was represented by Mrs Rawal but did not attend hearing to

testify. Her counsel had tried to get her without success.

6. The couple has been apart for about two years and there has been no contact. Considering the difficulties that the young marriage has endured, I allow the application. This means that the applicant is at liberty to file for divorce, notwithstanding that the marriage is less than three years old.

DATED and DELIVERED at NAIROBI this 10th NOVEMBER 2016

A.O. MUCHELULE

JUDGE