

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MISC. CAUSE 56 OF 2016

IN THE MATTER OF AN APPLICATION FOR LEAVE TO FILE A DIVORCE BEFORE THE
MANDATORY PERIOD OF THREE YEARS

VERSUS

S B.....APPLICANT

VERSUS

S M.....RESPONDENT

RULING

1. The applicant seeks leave to be allowed to file for a divorce dissolving her marriage to the respondent which was solemnized on 18th December 2015 notwithstanding that the mandatory period of 3 years has not lapsed. The application is based on grounds that; she got married to the respondent on 18th December 2015 at the Attorney General's Chambers in Nairobi. That the respondent has been extorting money from the applicant and has since the celebration of the said marriage has been engaging in acts of adultery and that the said marriage has broken down irretrievably. That the said marriage has caused the applicant untold hardship and that the respondent is an alien and could leave the jurisdiction of the court at any time adding that no prejudice will be occasioned to the respondent should the orders sought be granted to the applicant.
2. In her affidavit in support of the said application the applicant avers that she and the respondent upon solemnizing their marriage at the Attorney General's on 18th December 2015 they cohabited as husband and wife in Nairobi. That since the celebration of the said marriage the respondent has exposed her to psychological torture and mental anguish and has on various occasions forced her to send money to his bank account in India. That the respondent has since the celebration of the said marriage engaged in adulterous acts with a lady called Nanditta and carries himself as if he is not married adding that the union has no issue and that the same has irretrievably broken down.
3. Section 66(1) of the Marriage Act No. 4 of 2014 provides that, ***“(1) A party to a marriage celebrated under Part IV may not petition the court for the separation of the parties or for the dissolution of the marriage unless three years have elapsed since the celebration of the marriage.***
4. The applications made before this court had previous been anchored under Matrimonial Causes Rules Rule 2 (1) which provided that , *“An application for leave to present a petition for divorce before three years have passed since the date of the marriage shall be made by originating summons in form 1 in the Appendix ”*. The Matrimonial Causes Act was however, repealed by the coming into effect to the Marriage Act No. 4 of 2014.
5. There is no provision under the Marriage Act 2014 that gives this court the power to entertain an application for leave or even a petition for divorce presented before the lapse of three years after the celebration of the marriage. The marriage in question was entered into on 18th December 2015 barely one year has lapsed since the celebration of the same.
6. The Petitioner may have reason to petition due to exposure to extreme cruelty and depravity the respondent may have exposed her to. However, the law as it stands gives no provision allowing this court

to allow the applicant to petition for the dissolution of her marriage before three years have lapsed since the celebration of the marriage. I therefore find that the application fails, the orders sought cannot be granted, there shall be no order as to costs.

Dated, signed and delivered this **2nd** day of **November** 2016.

R. E. OUGO

JUDGE

In the presence of;

.....**For the Petitioner**

.....**For the Respondent**

MS. Charity Court Clerk