

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

DIVORCE CAUSE NO. 211 OF 2014

BETWEEN

A Q M.....PETITIONER

AND

E M N.....RESPONDENT

RULING

1. The application by the Respondent is brought by way of Chamber Summons dated 10th July 2015 for orders that:
 1. the present divorce Petition is a repetition of two previous divorce Petitions filed by the Petitioner on the same issues and is therefore Res-Judicata and should be dismissed with costs.
 2. The two previous divorce Petitions are:
 - i. High Court of Kenya Divorce Petition No. 67 of 1990.
 - ii. Milimani Commercial Courts Divorce Petition No. 121 of 1998 which was dismissed on 14th January 2000.
 3. This application is supported by the affidavit of the Respondent

and on the grounds of opposition that the Applicant is attempting to undo what has already been done thus it is overtaken by events since the Registrar had already certified the pleadings as complete and that the petition should proceed as an undefended cause; and that the application is defective in form and substance for failing to disclose the grounds upon which it is premised.

2. The Petitioner/Respondent also alleges that the substratum of the Applicant/Respondent's application is framed in the nature of an answer to the Petitioner's petition. That in fact, it is an answer to the Petitioner's petition disguised as an application, since it responds to the issues raised in the Petitioner/Respondent's petition, yet the time frame within which he was supposed to file his answer expired long time ago. Further that the Applicant's application is fatally defective, incompetent, alien and unknown to law. That it does not disclose which law it is premised on, fails to seek court's leave given that it is filed after the Registrar had certified that the petition would proceed as undefended and issued a certificate to that effect.
3. When the matter came up for hearing on 29th September, 2015, learned counsel Mr. Makhanu for the Petitioner/Respondent submitted on the issue of Res-judicata, that the ruling that is annexed is not certified and lacks authenticity. Secondly, that even if it was authentic the ruling made a determination on an application that was brought on an interlocutory basis in a divorce cause which was never heard as the file went missing and was never traced. He argues that the petition for divorce is not therefore Res-judicata because it was never considered whether in the lower court or the High Court.
4. Mr. Makhanu further submitted that this application was not properly before the court since it does not state the law under which it is brought nor the grounds thereof.

5. After going through the records, I find that even if the court considers that the Respondent does not have representation and determine to render substantial justice rather than dismissing his application on a technicality due to its form, no proceedings from the two causes have been attached to aid the court. The ruling allegedly rendered by Githinji J in Divorce cause No. 67 of 1990 was not certified and its authenticity cannot be vouched for. In any case it appears to relate to an interlocutory application and not the divorce petition itself. There is no evidence that the divorce cause has ever been heard and determined on its merits. I therefore find that the petition before me is not Res-judicata.

The application is therefore dismissed for want merit with no orders as to costs.

SIGNED DATED and **DELIVERED** in open court this **8th** day of **October 2015**.

L. A. ACHODE

JUDGE