

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
DIVORCE CAUSE NO. 6 OF 2013

S M H PETITIONER

VERSUS

A S M RESPONDENT

JUDGMENT

By the petition dated 4th February 2013 and filed in court on 5th February 2013 the Petitioner S M H prays that:

- “(i) The marriage between the Petitioner and the Respondent be annulled.***
- “(ii) The decree nisi be made absolute***
- “(iii) Any further and such orders the Honourable court may deem fit to grant”***

The Respondent A S M despite having been served with the petition and a summons failed to enter appearance or to respond to the petition. The matter therefore proceeded as an undefended cause. The Petitioner told the court that she and the Respondent got married on 2nd June 2011 at the Registrar’s office in Mombasa. She produces a copy of her Marriage Certificate serial No. [Particulars Withheld] as proof of this fact (**Pexb1**). After their marriage the couple lived briefly in Mombasa then moved to London in October. The Petitioner states that their marriage remained unconsummated as the Respondent was impotent thus was physically unable to engage in sexual intercourse with her. On this basis she seeks that their marriage be annulled. Section 14 of the Matrimonial Causes Act, Cap 152, Laws of Kenya provides the grounds upon which a decree of nullity of a marriage may issue. Section 14(1) (a) provides that:

“The following are the grounds on which a decree of nullity of marriage may be made

- a. that either party was permanently impotent, or incapable of consummating the marriage, at the time of the marriage”***

The Petitioner testified that at no time have they been able to consummate the marriage due to the incapacity of the Respondent to do so. In her petition para 6 she states that even on the wedding night the Respondent was unable to engage in sexual intercourse with her. This evidence remains unchallenged and the Respondent made no effort to deny these claims. I have seen the note dated 27th November 2012 from Dr. Mala Nyun an Obstetrician and Gynaecologist based at Pandya Hospital which confirms that upon a physical examination he found the Petitioner’s hymen to be intact. This is proof that no consummation of the marriage had taken place. On this basis I am satisfied that a proper basis for annulment has been laid. I therefore grant this petition and declare the marriage between the Petitioner and Respondent annulled. Decree nisi to issue to be made absolute within three (3) months of today’s date. No order on costs.

Dated and Delivered in Mombasa this 14th day of February 2014.

M. ODERO

JUDGE

In the presence of:

Mrs. Ali for Petitioner