

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

DIVORCE CAUSE NO. 65 OF 2013

BETWEEN

D K I.....PETITIONER

AND

T S M.....RESPONDENT

JUDGEMENT

1. Marriage was celebrated between the parties herein on 2nd April 2011 at the Deliverance Church, House of Bread, KPCU, Nairobi. A certificate of marriage serial number *[particulars withheld]* was issued to them in accordance with the African Christian Marriage and Divorce Act. The couple thereafter cohabited at Kiambu town, Kiambu County, Kenya, as husband and wife. The couple was blessed with one issue – D M, born in 2011.
2. The petition in this matter was filed in court on 27th March 2013.
3. It would appear that the petition before me is incompetent, as it was filed in contravention of section 6 of the Matrimonial Causes Act, Cap 152, Laws of Kenya. Under that provision no petition for divorce is to be presented to the court unless three years have passed since the date of marriage. Marriage was celebrated on 2nd April 2011 and the divorce petition lodged on 27th March 2013. The petition was presented before expiry of the three years envisaged by section 6 of the Matrimonial Causes Act..
4. The proviso to section 6 of the Matrimonial Causes Act gives discretion to the court to allow a petition to be presented before expiry of the three years, subject to the conditions stated in the proviso. No evidence has been placed before me to establish that such leave of court had been obtained..
5. The petition is premature and incompetent. I hereby strike out the same. There will be no orders as to costs.

DATED, SIGNED and DELIVERED at NAIROBI this 14th DAY OF March, 2014.

W. MUSYOKA

JUDGE