



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MOMBASA**

**ANNULMENT CAUSE NO. 61 OF 2012**

M M H M.....PETITIONER

VERSUS

M J.....RESPONDENT

**JUDGMENT**

The petitioner **M M H M** filed in court this petition dated 18<sup>th</sup> December, 2012 seeking the annulment of her marriage to the respondent **M J**. The respondent a British national who lives in the United Kingdom was properly served with notice of the petition as well as a summons to enter appearance by way of substituted service by DHL courier. The respondent made no reply to the summons – he did not enter appearance neither did he file any reply to the petition. The matter proceeded as an undefended cause.

The petitioner told the court that she entered into an arranged marriage with the respondent who was a British citizen. The marriage was solemnized on 17<sup>th</sup> October, 2011 at the office of the Registrar in Mombasa. The petitioner has produced as evidence of the marriage the certificate serial number [Particulars withheld]**Pexb 1**. Following the civil marriage the parties agreed that they would enter into a formal Islamic union before they consummated the marriage. As such the petitioner returned to her parents’ home in old town after the civil ceremony whilst the respondent put up in a hotel. A few days after the civil ceremony, the respondent returned to the United Kingdom. The agreement was that he was to return to Kenya to participate in the religious Islamic ceremony before the couple would begin to cohabit as man and wife. As it transpired the respondent never returned to Kenya as agreed. The petitioner avers that the marriage remains unconsummated to date and hence her petition seeking an annulment.

Section 73(1) (a) of the new Marriage Act No. 4 of 2014 provides that

**“A party to a marriage may petition the court to annul the marriage on the ground that –**

- a. **The marriage has not been consummated since its celebration.**
- b. **.....”**

This is precisely what the petitioner here is alleging that since the time of celebration of her marriage to the respondent in October, 2011 the marriage has never been consummated. As stated earlier the respondent was properly served with the petition but opted to make no reply. More specifically the respondent has not denied or challenged the petitioner’s claim that the marriage was never consummated. The petitioner explained that despite having undergone a civil ceremony in line with Islamic religious principles, the couple decided to postpone the consummation of their marriage until a religious ceremony had been performed. This is not far-fetched or unbelievable. As a court I have no reason to doubt that such an agreement was actually reached. A few days after the marriage, the respondent returned to the United Kingdom. Although he was to come back to Kenya for the religious ceremony he failed to do so. As such no religious ceremony was ever performed and the marriage remained unconsummated. This is a valid ground for annulment. I am satisfied that the petitioner has established valid grounds and I do hereby grant the order of annulment as prayed. No order on costs.

**Dated and delivered in Mombasa this 3<sup>rd</sup> day of June, 2014**

**M. ODERO**

**JUDGE**

In the presence of:

Mr. Mohamed h/b Mr. Hamza for Applicant

Court Clerk Mutisya