

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

MISC. APPLICATION NO. 112 OF 2014

B N**APPLICANT**

V E R S U S

E M**RESPONDENT**

R U L I N G

The Notice of Motion dated 20.6.2014 seeks to have a certificate of divorce absolute issued by the Commonwealth Court of Massachusetts in America adopted as a judgment of this court. The application was ex-parte and is supported by the applicant's affidavit sworn on same dated. The applicant contends that he was granted a certificate of divorce absolute on the 9.12.2011. The marriage between himself and the respondent was dissolved and would like to have the certificate that dissolved the marriage be adopted as the judgment of the court. The respondent lives in America.

The application is made under **section 3** and **3(a)** of the Civil Procedure Act. I do find that the application is brought under the wrong provisions of the law. However, that is a technical matter which cannot affect the right of the applicant to be heard. Chapter 43 Laws of Kenya is the Foreign Judgments (Reciprocal Enforcement) Act. It is an Act of Parliament for the enforcement of judgments given in countries outside Kenya. That is the legislation which governs the adoption of foreign judgments as judgments issued by the Kenyan courts. **Section 3 (3) (d)** of the said Act indicates that a foreign judgment which deals with a matrimonial cause or matter or which determines the rights in property arising out of a matrimonial relationship cannot be adopted in Kenya. The applicant would like to have his divorce be adopted as divorce certificate issued by the Kenyan court. Divorce is a personal issue and there is no need for the applicant to seek his divorce to be adopted in Kenya. That divorce is automatically recognized in Kenya as it provides for the relationship between the two parties. The applicant and the respondent are no-longer couples and that status need not be repeated in Kenya. It is equivalent to a marriage having been solemnized in Kenya and a valid marriage certificate issued to the couple. If they migrate out of the country then where they will be domiciled they will not need to undergo a second marriage. The applicant has not indicated the purpose of the adoption of the divorce certificate as a judgment of the court but he is advised that there is no need for it to be adopted by a Kenyan court. If there is any property in Kenya to be divided amongst the two, then that issue can be dealt with as a separate claim and the respondent has to be served.

In the end I do find that the application is misplaced as it is not necessary. The divorce granted in America governs the relationship between the two parties both in America and Kenya. Should the respondent claim to be married to the applicant all what will be required would be for the applicant to produce the decree absolute issued in America. The application lacks merit and is disallowed.

Delivered, dated and signed at Kakamega this 16th day of October 2014

SAID J. CHITEMBWE

J U D G E