



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KISII
DIVORCE CAUSE NO. 3 OF 2010

T K K.....PETITIONER

VERSUS

B A M.....RESPONDENT

JUDGMENT

1. This is a petition for divorce by the petitioner, **T K K** with **B A M** the respondent herein. It is dated 13th August, 2010 and filed at Kisii High Court on 16th August, 2010.
2. The petitioner says she was lawfully married by the Respondent under the provisions of the marriage act Cap 150 of Kenya, their marriage certificate thereof is marked TKK-00A.
3. That upon informing her parents of the said marriage, the parents opposed the marriage on the grounds that the petitioner and the respondent were closely related and as such no marriage can be allowed between them.
4. They both belonged to the same clan between whom marriage is customarily forbidden. The clan is called Bonyamasicho clan. That revelation precluded them from celebrating and consummating the said marriage and the parties did not therefore proceed to live as husband and wife as is normally the case, right from its inception i.e. from 13th march, 2007 to date.
5. The marriage, therefore between the Petitioner and Respondent can be deemed to have irretrievably broken down ab initio and is incapable of being salvaged and has for all purposes ceased to exist.
6. The said petitioner and the said Respondent have not connived or condoned in the acts herein stated.
7. The petitioner prays that:-
 - a. *The said marriage between the petitioner and the Respondent be dissolved.*
 - b. *The costs be borne by the Respondent.*
 - c. *The Petitioner be granted such further or other relief as the court may deem fit and just to grant.*
8. This marriage involved a closely related clan called Bonyamasicho clan. This clan is wide spread within Nyaribari Masaba constituency where both the petitioner and the Respondent hail from. Unknown to them at the time of marriage in Nairobi at the Attorney-General's chamber's they got married. It is when they informed their respective parents that they were informed that they were infact cousins. In Gusii Customs cousins cannot marry, unlike Arabs, Whites and Asians and other foreign races, where the cousins can and do infact marry.

9. The evidence of the Petitioner, the evidence of the Respondent, of H N, the Petitioner's brother and the evidence of A K DW2, were corroborating the same theme, cousins do marry and the petitioner and the Respondents were cousins. No dowry would not /be accepted nor expected and the marriage would receive no blessings, if anything, this marriage would attract a curse. It had to be terminated, the sooner the better.
10. The court finds that the petitioner has laid sufficient evidential reasons why this marriage must be terminated.
11. Accordingly, the petition dated 13th August, 2010 be and is hereby allowed. Thus the marriage entered into on 13th March, 2007 is hereby dissolved.
12. The decree nisi to issue forthwith. The decree absolute to follow after six months statutory period.

Dated and delivered at KISII this 4th day of December, 2014.

C.B. NAGILLAH,

JUDGE.

In the presence of:-

Momanyi for the petitioner.

Respondent in person

Edwin Mongare Court Clerk.