



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**MILIMANI LAW COURTS**

**DIVORCE CAUSE NO.138 OF 2008**

C W N.....PETITIONER

VERSUS

P K K.....RESPONDENT

**J U D G M E N T**

The Petitioner and the Respondent were married on 7<sup>th</sup> June 2006 at the Registrar's Office in Nairobi. The marriage was celebrated under the **Marriage Act**. According to the Petitioner, the Respondent represented himself to her as a bachelor. The marriage was blessed with one issue. The Petitioner works as a Radiographer in a hospital in England while the Respondent is a businessman in Kenya. The Petitioner avers that after the celebration of the said marriage, she discovered that the Respondent was married to one E W N with whom the Respondent had sired two children. It was the Petitioner's case that the Respondent, at the time he purported to have entered into the marriage with her, lacked legal capacity to enter into such marriage. In the premises therefore, the Petitioner urged the court to nullify the marriage that was entered between herself and the Respondent as the same was null and void. The Petitioner further urged the court to grant her custody and control of the child. She further asks the court to grant her petition for divorce.

When the Respondent was served, he duly entered appearance and filed an answer to the petition. He also filed a cross-petition. In the answer to the petition, the Respondent put the Petitioner to strict proof thereof in relation to the allegations made by the Petitioner in the petition for divorce. He attributed the failure of the marriage to the fact that the Petitioner relocated to England immediately after the celebration of the marriage thus deserting him. It was for this reason that the Respondent cross-petitioned the court for the marriage to be dissolved on the ground of desertion. The Respondent stated that his marriage to the Petitioner had irretrievably broken down with no possibility of salvage.

At the hearing of the petition, this court heard oral evidence adduced by the Petitioner. The Respondent had no evidence to offer. The Petitioner reiterated the contents of her petition. She testified that at the time she got married to the Respondent, the Respondent was married to another woman. The Respondent therefore had no capacity to enter into another marriage which is legally monogamous. It was her testimony that upon discovery of this fact in 2007, she was separated from the Respondent. She urged this court to grant her petition for divorce. She also asked the court to grant her custody of the child of the marriage.

This court has read the pleadings filed by the parties to this divorce cause. It has also considered the evidence adduced by the Petitioner. It was clear that the marriage between the Petitioner and the Respondent was entered into on the basis of deception by the Respondent. The Respondent did not disclose to the Petitioner that he lacked capacity to enter into a marriage that is legally monogamous because he was already married under customary law to another woman. Indeed, it was established that the Respondent had sired two children with the other woman. In the premises therefore, this court holds that the marriage celebrated between the Petitioner and the Respondent was a nullity because the Respondent had no capacity to enter into a statutory marriage under the **Marriage Act**.

For the above reasons, the marriage celebrated between the Petitioner and the Respondent on 7<sup>th</sup> June

2006 at the Registrar's Office in Nairobi is declared a nullity. The same is hereby dissolved. Decree nisi dissolving the said marriage is hereby issued. The decree nisi shall be made absolute thirty (30) days from the date of this judgment. The Petitioner shall have custody of the child. There shall be no orders as to costs. It is so ordered.

**DATED AT NAIROBI THIS 8<sup>TH</sup> DAY OF OCTOBER, 2013**

**L. KIMARU**

**JUDGE**