

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

DIVORCE CAUSE 180 OF 2011

P.P.L.....PETITIONER

A.A.D.....RESPONDENT

JUDGEMENT

The Petitioner, P.P.L., presented a petition to this court on 28th November 2011 seeking an order for nullification of her marriage to **A.A.D.** The marriage was solemnized on 14th October 2008 in accordance with Hindu Vedic Ceremonies at the Oshwal Centre on Desai Road, Parklands, Nairobi, as evidenced by a Certificate of Marriage serial No.[...] dated 14.10.2008 issued by Shree Lohana Mahajarn Mandal which was produced as exhibit No.P1 by the Petitioner during the hearing of the Petition on 21st June 2012.

The Petitioner is an American citizen of Hindu descent. Her petition shows that she left Kenya and went to the United States of America immediately after the celebration of the marriage. In her testimony, she told the court that the Respondent had promised to follow her to America shortly thereafter, but he never did. Consequently the parties never cohabited and it was her evidence that the marriage has never been consummated and that there are no children of the marriage. Both in her petition and in her testimony, the Petitioner stated that she resides permanently in the United States of America while the Respondent resides in Kenya and travels to and from India. It was her evidence that the Respondent has never attempted to link up with her in the United States of America. She wants out of the marriage so that she may start her life again.

The Petition and the Petitioner's testimony were silent on the question of the Petitioner's domicile. Section 4 of the Matrimonial Causes Act, Cap 152, whose provisions govern the marriage, prohibits the making of a decree of dissolution of marriage or of nullity of marriage unless the Petitioner is domiciled in Kenya at the time when the petition is presented. It also prohibits the grant of any other relief unless one of the parties has his or her usual residence in Kenya at the time the Petition was presented or unless the marriage was solemnized in Kenya. It is my finding from the pleadings and evidence that the Petitioner is not domiciled in Kenya and was not so domiciled when she presented the Petition in court, nor did she have her usual residence in Kenya. However, it is patent, and I do find, that the Petitioner's husband, the Respondent herein, was prior to the presentation of the Petition domiciled in Kenya where he ordinary resides and operates from. The marriage was also solemnized in Kenya. Accordingly, the court has jurisdiction to hear and determine the petition.

The Respondent was served with the Petition on 24.1.2012 at [...], Nairobi, by a process server, known as Kennedy Okall Orok. He accepted service of the Petition and endorsed his signature on the copy returned to court with the Affidavit of Service of the said Process Server sworn on 30.1.2012. Being satisfied with the service of the Petition on the Respondent, the Deputy Registrar issued on 26.4.2012 a Certificate of Compliance pursuant to Rule 29(1) of the Matrimonial Causes Rules and certified the cause as an undefended cause as the Respondent had failed to either enter appearance or to file an answer to the Petition.

In her testimony before me on 21.6.2012, the Petitioner was emphatic that the Respondent refused to consummate the marriage and failed to keep his part of the bargain that he would follow the Petitioner to America where both would take up residence and hopefully consummate the marriage. The Petitioner

waited for the Respondent in America but he never showed up as he continued to live in Kenya. He made no effort to follow her in America. He cut her out of his life. From the date of the marriage up to the date of the presentation of the Petition, no consummation took place. It is my finding that the Respondent acted unreasonably and willfully refused to consummate the marriage which only exists in name. I am also satisfied that the Petitioner has not acquiesced in the Respondent's failure to consummate the marriage.

Accordingly, I pronounce a decree for nullity of the said marriage pursuant to Section 14(1)(b) and Section 15 of the Matrimonial Causes Act and hereby nullify the marriage between the parties on the ground of the Respondent's willful refusal to consummate the marriage. In the first instance a decree nisi shall issue forthwith and subject to the provisions of Section 15 of the Matrimonial Causes Act, Cap 152, the decree nisi shall be made absolute after the expiry of three months after this pronouncement. It is so ordered. There shall be no order as to costs.

Dated at Milimani Law Courts Nairobi, this 5th day of July 2012

G.B.M. KARIUKI, SC
JUDGE

COUNSEL APPEARING

Mr. D. Oyatta Advocate, of Oyatta & Associates for the Respondent

Mr. Kugwa – Court Clerk