



**WA v HHN (Matrimonial Cause 780 of 2022)
[2023] KEMC 43 (KLR) (29 November 2023) (Judgment)**

Neutral citation: [2023] KEMC 43 (KLR)

**REPUBLIC OF KENYA
IN THE MILIMANI COMMERCIAL CHIEF MAGISTRATE'S COURTS
MATRIMONIAL CAUSE 780 OF 2022
JP ADUKE, SRM
NOVEMBER 29, 2023**

BETWEEN

WA PETITIONER

AND

HHN RESPONDENT

JUDGMENT

- 1 The Petitioner filed the petition dated 27TH June 2022 seeking annulment of the marriage on the ground of non-consummation of the marriage. Return of service on record shows that the respondent was served with the petition and annexures thereto. The respondent neither entered appearance nor filed a response. The petitioner filed an application seeking to have the Matrimonial Cause proceed undefended. Return of service on record shows the petitioner served the respondent with the said application. These proceedings proceeded undefended.
- 2 The brief facts of the case are as contained in para 1-17. of the petition on record. In summary, WA and HHN solemnized their marriage on 18th March 2022 at the Registrar of Marriages in Nairobi. They have no issues together. One of them is domiciled in Kenya, while the other is not. The parties have no intentions of salvaging this marriage. The particulars of the grounds for annulment are outlined in paragraph 11 of the petition as follows:
 1. The marriage between the Respondent and the Petitioner was never consummated.
- 3 At the hearing thereof, the petitioner relied on her petition and verifying affidavit on record as evidence in support of the petition for divorce.
- 4 The issue for determination before this court is whether or not the marriage between the parties merits a decree of annulment under The Marriage Act, 2014 (hereafter, the Act).



5 The applicable law is s.73 of the Act which provides that the court may grant annulment on the following grounds:

- (a) the marriage has not been consummated since its celebration;
 - (b) at the time of the marriage and without the knowledge of either party, the parties were in a prohibited relationship;
 - (c) in the case of a monogamous marriage, at the time of the marriage one of the parties was married to another person;
 - (d) the petitioner's consent was not freely given;
 - (e) a party to the marriage was absent at the time of the celebration of the marriage;
 - (f) at the time of the marriage and without the knowledge of the husband, the wife is pregnant and that the husband is not responsible for the pregnancy; or
 - (g) at the time of the marriage and without the knowledge of the petitioner, the other party suffers recurrent bouts of insanity.
- (2) The court shall only grant a decree of annulment if:
- (a) the petition is made within one year of the celebration of the marriage;
 - (b) at the date of the marriage and regarding subsections (1)(b) and (c), the petitioner was ignorant of the facts alleged in the petition; and
 - (c) the marriage has not been consummated since the petition was made to the court.

6 I have considered the particulars of the ground outlined in the petition. I have also noted, from the pleadings on record that this petition was filed on 27th June 2022, while the said marriage was celebrated on 18th March 2022. I have weighed this against the provisions of s.73(2)(c) of the Act and note the obvious as follows. This marriage was solemnized on 18th March 2022. I have seen a copy of the marriage certificate dated 23rd March 2022 confirming that a wedding happened on 18th March 2022. The petition was filed on 27th June 2022, less than one year after the celebration of the said marriage.

7 In view of the above, this petition is allowed, and the marriage between the two hereby annulled. The same was void ab initio. I make no award as to costs.

JUDGEMENT SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 29TH NOVEMBER 2023.

ADUKE JEAL PRAXADES ATIENO

SENIOR RESIDENT MAGISTRATE

