



REPUBLIC OF KENYA



KENYA LAW
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**TAMO v JK (Miscellaneous Application E016 of 2023)
[2023] KEHC 1437 (KLR) (23 February 2023) (Ruling)**

Neutral citation: [2023] KEHC 1437 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
MISCELLANEOUS APPLICATION E016 OF 2023**

JN KAMAU, J

FEBRUARY 23, 2023

**IN THE MATTER OF A DECREE OF DISSOLUTION OF MARRIAGE
ISSUED FROM HELSINGBORGS DISTRICT COURT, SWEDEN**

BETWEEN

TAMO APPLICANT

AND

JK RESPONDENT

RULING

1. In her *ex parte* chamber summons application dated and filed on January 10, 2023, the applicant herein sought that this honourable court do recognise and adopt the decree of dissolution of marriage that was issued on August 26, 2022 to her and the respondent herein at Helsingborgs District Court, Sweden in Case No T 3636 -22.
2. In her affidavit that she swore on January 10, 2023 in support of the present application, she stated that she got married to the respondent herein on September 6, 2019 and moved to Sweden where she lived with him for two (2) years. However, the marriage broke down irretrievably as a result of divorce proceedings were filed at Helsingborgs District Court, Sweden and a decree of dissolution of marriage was issued on August 26, 2022.
3. She averred that the Helsingborgs District Court, Sweden was a competent court with requisite jurisdiction to hear and determine divorce causes and that the said decree was valid and effective in Sweden and within the European Union (EU). It was her contention that the said decree was applicable for adoption under section 67 of the *Marriage Act, 2014*. She thus urged this court to allow her application as prayed.



Legal Analysis

4. The applicant did not file any written submissions. However, she relied on the case of *IWN vs HJC* [2012] eKLR where the court therein adopted a decree of dissolution of marriage from Germany that was granted to the applicant and the respondent therein.
5. This court perused the certificate of marriage between the applicant and the respondent herein and noted that they got married on September 6, 2019 at the Registrar's Office at Mombasa in Kenya. She attached copies of documents which were is Schengen. She filed a further affidavit that she swore on January 27, 2023 on February 7, 2023 annexing a translation of the documents in English as was directed by the court on January 26, 2023.
6. Although the said further affidavit was filed out of time and ought to have been struck out for failure by the applicant to seek to have the same admitted out time, this court took the view that it was best to ignore the procedural technicality as it did not go to the root of the substantive application, having been *ex parte* in nature. Indeed, article 159(2)(d) of the *Constitution of Kenya, 2010* mandates courts to administer justice without undue regard to procedural technicalities.
7. Going further, this court mulled over the applicant's omission to have served the respondent with the proceedings herein. Indeed, parties to any proceedings must be aware of what transpires at every stage of the proceedings.
8. Be that as it may, this court noted that the marriage between the applicant and the respondent herein had irretrievably broken down. As the basis of the *ex parte* application was for recognition and adoption of the decree of dissolution of marriage between them, this court took the view that the respondent would not suffer any prejudice if it pronounced itself on the matters at hand without his involvement herein.
9. Notably, section 67 of the *Marriage Act* No 4 of 2014 stipulates as follows:-
 - a. "Where a foreign court has granted a decree in matrimonial proceedings whether arising out of a marriage celebrated in Kenya or elsewhere, that decree shall be recognized in Kenya if—
 - a. either party is domiciled in the country where that court has jurisdiction or had been ordinarily resident in Kenya for at least two years immediately preceding the date of institution of proceedings;
 - b. being a decree of annulment, divorce or separation, it is effective in the country of domicile of the parties or either of them."
10. As the decree of dissolution of marriage between the applicant and the respondent was effective in Sweden and was issued by a court of competent jurisdiction, there was merit in the application herein being considered favourably. The question of reciprocity of recognition and enforcement of judgments between Sweden and Kenya under the *Foreign Judgments (Reciprocal Enforcement Act)* 1984 did not arise herein as the application only concerned itself with the recognition (emphasis court) of the aforesaid decree of dissolution of marriage between the applicant and the respondent herein.

Disposition

11. For the foregoing reasons, the upshot of this court's decision was that the applicant's *ex parte* chamber summons application dated and filed on January 10, 2023 be and is hereby allowed as prayed. There will be no order as to costs as this was an *ex parte* application.



12. It is so ordered.

DATED AND DELIVERED AT KISUMU THIS 23RD DAY OF FEBRUARY 2023

J. KAMAU

JUDGE

