



REPUBLIC OF KENYA



KENYA LAW
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**TAMO v JUK (Miscellaneous Application 36 of 2022)
[2023] KEHC 3526 (KLR) (28 April 2023) (Ruling)**

Neutral citation: [2023] KEHC 3526 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
MISCELLANEOUS APPLICATION 36 OF 2022**

G MUTAI, J

APRIL 28, 2023

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

BETWEEN

TAMO APPLICANT

AND

JUK RESPONDENT

RULING

Introduction

1. The Applicant got married to the Respondent on 6th September 2019 at the Registrar’s Office, Mombasa. At the time of the said marriage was solemnized the Respondent, then a divorced person, was 55. The Applicant, on her part, then a spinster, was 27.
2. When people get married, they ordinarily seek togetherness, trust, communication, intimacy and faithfulness. Married couples hope for mutually fulfilling lifelong relationships with or without children. An earthly nirvana, full of sweetness and light, is hoped for, nay, expected by love-struck couples as they exchange vows. Unfortunately, that is not always the case with many couples. In the trite Kenyan expression “kwa ground things tend to be different”.
3. The short marriage between the Applicant and the Respondent falls into the latter case. From the pleadings I have seen theirs wasn’t a marriage made in heaven. Soon after the celebration of the marriage between them the Respondent, in what may be described as an episode of “The Runaway Husband”, moved back to Sweden, his country of origin and left his lovelorn wife alone in Kenya to lead a life of solitude and misery.



4. William Shakespeare wrote in Sonnet 116 that “love alters not with his brief hours and weeks, but bears it out even to the edge of doom”. If only it was so in this union.
5. Theirs was short, so short indeed that no issue was resulted. The couple being apart, and with the Covid-19 pandemic making international travel impossible for most people in the years 2020 and 2021, their marriage irretrievably broke down. The Respondent filed divorce proceedings at the Helsingborg District Family Court in Sweden. Pursuant to the said proceedings the marriage was dissolved on 26th August 2022. In Sweden, and also within the European Union, the Applicant and the Respondent are not a couple. In the world of sport the two former lovebirds are, in those climes, free agents, who if they so desire, may up with whichever partner they wish.
6. So much for the situation in Sweden and the European Union. The Applicant is a Kenyan citizen. The marriage with her former consort was celebrated in Kenya. The question that came a-begging to me is narrow; is a divorce granted outside Kenya automatically recognized under the Kenya law or must the resultant decree be subjected to the procedures provided for in the Foreign Judgment (Reciprocal Enforcement) Act, 1984 or similar provision of our law?
7. The Foreign Judgments (Reciprocal Enforcement) Act, 1984 was enacted “for the enforcement of judgments given in countries outside Kenya which accord reciprocal treatment to judgments given in Kenya and for other purposes in connection therewith”. Section 3 of the said Act lists judgment to which the Act applies. In like manner it lists down matters which it does not apply. Section 3(3) (d) specifically provides that the Act does not apply to judgment or order

“in a matrimonial cause of matter or determining rights in property arising out of a matrimonial relationship, not being a judgment referred to in paragraph (a) or (b) of subsection (1), whereby a sum is payable or item of movable property deliverable”.
8. Under the Foreign Judgments (Reciprocal Enforcement) (Extension of Act) Order, 1984 as amended by Legal Notice No. 301 of 1991 the said Act applies to judgments obtained in 8 countries to wit Australia, Malawi, Seychelles, Tanzania, Uganda, Zambia, the United Kingdom and the Republic of Rwanda. Sweden is not among the 8 countries. Clearly then the said Act does not offer succor to the Applicant in this cause. Relief must thus be sought elsewhere.
9. Section 67 of the Marriage Act, 2014 provides that “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 county 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. The distinction between “enforcement” of foreign judgments and recognition was discussed by Odera, J in *IWN versus IJC* [2021]eKLR. In paragraph 11 of her judgment her Ladyship wrote that “It must be noted that “recognition of foreign judgments” is not the same as “registration”. Whilst the provision of the Foreign Judgments (Reciprocal Enforcement) Act only regulates the registration of foreign judgments, the implication is that judgments arising out of matrimonial causes be registered not for enforcement purposes, since matrimonial causes are declaratory in nature, but for dissolution of the marriage which is a personal right. Foreign annulments and dissolution of marriages are now registrable



under section 61 of the Marriage Act, 2014. Registration of such orders is a preserve of the Registrar of Marriages and not the Courts”. I am wholeheartedly in agreement with her. The point the learned judge makes is also discussed by Musyoka, J in *MNM versus PNM* [2016]eKLR.

11. Section 6, subsections (1) and (2), of the Marriage Act, 2014 provides that:-
 1. Where a marriage celebrated in Kenya is annulled or dissolved by a decree of a foreign Court, any party to the annulled or dissolved marriage may apply to the Registrar to register the decree;
 2. Where the Registrar is satisfied that a decree under this section should be recognized in Kenya as if the decree was made by a Kenyan Court the Registrar shall register the decree in a register maintained for that purpose”.
12. The Marriage Act, 2014 defines the Registrar as “a person appointed under section 50 of this Act”. Section 50 of the said Act provides that the Registrar of Marriages shall be appointed by the Cabinet Secretary, that is to say, the Attorney General in this case, and the said Registrar “may appoint such marriage officers at national and county levels as may be necessary”.
13. Unlike the Foreign Judgments (Reciprocal Enforcement) Act, 1984, the Marriage Act, 2014 does not require the existence of reciprocity between the country where the decree is granted and the Republic of Kenya. Consequently any decree of divorce or annulment granted by a civil authority, with a force of law in a country recognized under international law, may be registered in Kenya, provided that it is shown to the satisfaction of the Registrar that:-
 - a. Either party was domiciled in the country where that Court has jurisdiction or was ordinarily resident in Kenya for at least 2 years immediately preceding the institution of proceedings; and
 - b. The decree of annulment, divorce, or separation is effective in the country of domicile of the parties or either of them.
14. Does the application before me meet the said test? Is the application one that should be granted? I shall look at each requirement in turn.

Was one or both of the parties domiciled in the country where the decree was issued?
15. The Marriage certificate gives the country of residence of the Respondent as Sweden. It has been deposed that the Respondent left Kenya immediately after the marriage was celebrated which act led to the irretrievable breakdown of the marriage. Based on the foregoing I am satisfied that the Respondent is domiciled in Sweden. The decree was issued by the Helsingborg District Court Family Court in Case No. T 3636-22. I have seen a copy of the decree translated into English (exhibit “TAMO-2a) and the certificate declaring that the judgment regarding the parties had gained legal force (exhibit “TAMO-2b”). I have no reason to doubt that the Swedish Court has the requisite jurisdiction to issue the decree of divorce. Further, the Applicant remained in Kenya and was resident herein for at least two years prior to the institution of these proceedings. In light of the foregoing the first test has been met.

Is the decree of divorce effective in the country of the parties or either of them?

16. As indicated above there is a certificate (exhibit TAMO -2b) which indicates that the judgment has come into force in Sweden. That being the case the second test has been met.
17. Having made the above determinations I now find and hold that the divorce granted in Sweden is one that could be registered in Kenya pursuant to section 61 of the Marriage Act, 2014. I also find and hold that section 61 of the said Act does not call for the kind of application that the Applicant has filed



herein. All she needed to do was to make the necessary application to the Registrar and to provide the documents required under section 61(3) of the *Marriage Act* and the Registrar would have registered the decree in the Register maintained for that purpose, upon being satisfied that the application met the required threshold.

18. Given that the Applicant has filed this application and hearing in mind the principle in Article 159 of *the Constitution* of Kenya, 2010 that calls on Courts to administer justice without undue regard to procedural technicalities and also taking into account the need for just, expeditious, proportionate and affordable resolution of disputes and the need for efficient use of the available judicial time I shall allow the application in the following terms: -
 1. The decree of dissolution of marriage issued by the Helsingborg District Family Court, Sweden on 26th August, 2022 in Case No. T3636-22 is hereby recognized and adopted by this honourable Court; and
 2. I make no orders as to costs in view of the nature of the matter.
19. I direct the Applicant to make the necessary application under section 61 of the *Marriage Act*, 2014, by presenting the decree issued by the Swedish Court, together with the order issued herein, for purposes of having the said decree registered in the appropriate register maintained for that purpose.
20. Orders accordingly.

DATED, SIGNED AND DELIVERED AT MOMBASA THIS 28TH DAY OF APRIL 2023

GREGORY MUTAI

JUDGE

In the presence of:-

Winnie Migot – Court Assistant

Mr. Onduso for the Applicant

No appearance for the Respondent

