



**RKO v COO (Miscellaneous Application E024 of 2023)
[2023] KEHC 23211 (KLR) (29 September 2023) (Ruling)**

Neutral citation: [2023] KEHC 23211 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
MISCELLANEOUS APPLICATION E024 OF 2023**

G MUTAI, J

SEPTEMBER 29, 2023

**IN THE MATTER OF A DECREE FROM THE DISTRICT COURT NO 507TH
JUDICIAL DISTRICT, HARRIS COUNTY, TEXA, UNITED STATES OF AMERICA**

BETWEEN

RKO APPLICANT

AND

COO RESPONDENT

RULING

Introduction

1. The Applicant got married to the Respondent on December 27, 2015 at the SDA Church, Nairobi. At the time they solemnized their union the Applicant, a Project Manager, resided in Houston, Texas while the Respondent, a pharmacist lived in Baytown, Texas. The parties were, at the time they got married, a spinster and a bachelor respectively. Their union was blessed with one issue, a baby boy named OOO born on May 23, 2017. Both parties are Kenyan citizens currently domiciled in the United States of America.
2. The marriage between the Applicant and the Respondent was dissolved on May 24, 2023 pursuant to a consent decree which was adopted as a judgment and decree of the Court in the District Court 507th Judicial District, Harris County, Texas. Vide the proceedings before me the Applicant seeks to have the said decree recognized and adopted by this honourable Court.
3. The Applicant’s Notice of Motion is dated June 20, 2023. Vide the said Motion she seeks the following 2 orders: -
 1. That the honourable Court do recognize and adopt the decree from the District Court 507th Judicial District, Harris County, Texas, United States of



America signed on the 24th day of May 2023 and issued to RKO, the Applicant herein, and COO, the Respondent herein; and

2. That the costs of this application be provided for.
4. The Applicant avers that the District Court 507th Judicial District, Harris County, Texas is a competent Court with requisite jurisdiction to hear and determine matrimonial proceedings and that for that reason the said decree is valid and effective. She also urges that it is in the best interest of the child to allow the application. The Applicant attached to her Supporting Affidavit a copy of the certificate of Marriage, the certificate of Birth of the issue of the marriage, the parties' national identification cards and Agreed Final Decree of Divorce.
5. Despite being served the Respondent never appeared. The matter thus proceeded ex parte before me on July 31, 2023. Mr. Arunga learned counsel for the Applicant prayed that I allow the application. After hearing the submissions of the said counsel, I reserved my ruling for September 29, 2023.
6. I have perused the said application and the affidavit in support thereof. I have also considered the exhibits annexed thereto. I must now determine if the I should allow the application.
7. Section 67 of the Marriage Act 2014 provides for the recognition of Divorce Decrees issued by Foreign Courts as follows:-

“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 Divorce of annulment, divorce or separation, it is effective in the country of domicile of the parties or either of them.”
8. The Applicant and the Respondent are both domiciled in the United States of America. They both live in the State of Texas. I have no reason to doubt that the Court that issued the decree had the requisite jurisdiction to do so. I have read the judgment. In my view the consent decree of divorce is effective under the laws of the State of Texas. I therefore find and hold that the decree of divorce provided by the Applicant is capable of being recognized in Kenya.
 9. Under the Kenya law “recognition” of a decree of divorce is different from “registration”. The Court in IWN v HJC [2021] eKLR stated as follows:-

“It must be noted that recognition foreign judgments is not the same as Registration. Whilst the provisions 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 annulment and dissolution of marriage 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. For clarity purposes and avoidance of doubt, I wish to reproduce Section 61 of the Marriage Act 2014 which provides that:-

“Sub-Section (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.”

10. I am in full agreement with what W Musyoka, J stated in MNM v PNM (2016) eKLR to wit that:-

“Foreign annulments and dissolution of marriages are now registrable under Section 61 of the Marriage Act, 2014. However, unlike the provisions in the foreign judgments (reciprocal enforcement) Act, which envisages adoption of such orders by the courts, the registration envisioned in Section 61 of the Marriage Act 2014 is by the Registrar of Marriages.”

11. The Applicant seeks to have the foreign decree of divorce recognized by this Court. I see no reason to decline to do so. In the result: -

1. I recognize and adopt the decree of divorce from the District Court 507th Judicial District, Harris County, Texas, United States of America signed on the 24th day of May 2023 and issued to RKO, the Applicant herein, and COO, the Respondent herein;
2. I order the Applicant to register the said decree of divorce with the Registrar of Marriages pursuant to section 61 of the Marriage Act, 2014; and
3. Each party shall bear own costs.

Orders accordingly.

DELIVERED AND DATED THIS 29TH DAY OF SEPTEMBER 2023 AT MOMBASA VIA MICROSOFT TEAMS

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GREGORY MUTAI

JUDGE

