



GDM v CMM (Divorce Cause 01 of 2019) [2022] KEHC 10231 (KLR) (30 June 2022) (Judgment)

Neutral citation: [2022] KEHC 10231 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
DIVORCE CAUSE 01 OF 2019
TW CHERERE, J
JUNE 30, 2022**

BETWEEN

GDM PETITIONER

AND

CMM RESPONDENT

JUDGMENT

- 1) The petitioner herein filed Petition herein on May 2, 2019 seeking the following orders:
 - a. Dissolution of the marriage entered between the petitioner and respondent on June 3, 2010
 - b. Alimony and ancillary provision for the petitioner in form of decent housing, furniture, house wares and home accessories, access to transport and Kshs. 300,000/- per month to cater for living expenses and necessities
 - c. Costs of the Petition
- 2) On the issue of divorce, petitioner testified that her marriage to the respondent has irretrievably broken down on account of respondent's adulterous relationship with one JKK with whom they had sired 2 children and his desertion of the matrimonial home since 2014 subsequent to which she left the home in 2019 after respondent converted part of it into a wine and spirits shop.
- 3) On February 22, 2021, respondent filed answer to petitioner and Cross-Petition in which he also sought an order for dissolution of the marriage. Respondent acknowledged that he has during the subsistence of the marriage between him and petitioner taken JKK as his wife in 2011 and that they had sired 2 children. Respondent stated that it was with the consent of the petitioner which the petitioner disputed.



- 4) The relevant sections of our law in respect to dissolution of a marriage contracted by couples like the petitioner and the respondent who professes Christian faith is provided for under section 64 and 65 which provides as follows:

“S.64 – the parties to a marriage celebrated under part 111 may seek services of any reconciliation bodies established for that purpose that may exist in the public or place of worship where the marriage was celebrated.

S.65 – A party to a marriage celebrated under Christian system of marriage may petition the court for a decree for the dissolution of the marriage on the ground of: -

- a). one or more acts of adultery committed by the other party;
 - b). cruelty, whether mental or physical, inflicted by the other party on the petitioner or on the children, if any, of the marriage; or
 - c). desertion by either party for at least three years immediately preceding the date of presentation of the petition;
 - d). exceptional depravity by either party;
 - e). the irretrievable breakdown of the marriage.
- 5) The evidence by both parties confirm that respondent is guilty of adultery. The parties have lived separate lives since 2014 and both state that there is no room for reconciliation.
- 6) It is evident that the marriage between the petitioner and respondent has broken down beyond repair owing to irreconcilable difference. The prayer for dissolution of the marriage between the two is therefore merited.
- 7) Concerning the prayer for alimony, petitioner testified that respondent has been benefiting from various assets which are the subject of High Court Matrimonial Cause No. 14 of 2019 between them which is still pending while she collects only Kshs. 40,000/- from rental houses on LR. No. Ntima/Ntakira/XXX and uses motor vehicle KBZ XXX. Whilst acknowledging that she has been collecting rent from the aforementioned asset, she conceded that she did not file her bank statements for the period 2019 to date to prove that she only collects Ksh. 40,000/-. petitioner also confirmed that she has not been to the matrimonial home at LR. Nkuene/Taita/859 since 2019. She urged court to direct the respondent to pay her alimony in the sum of Kshs. 300,000/- monthly.
- 8) Respondent stated that the matrimonial home is still intact and petitioner is at liberty to take occupation. It was his evidence that petitioner has been collecting rent from 34 rental houses on LR. No. Ntima/Ntakira/XXX since 2019 which is adequate for her maintenance.
- 9) I have considered the evidence on record and submissions filed on behalf of both parties.
- 10) In considering whether petitioner is entitled to an order of alimony, I am guided by the finding in *WMM v BML* [2012] eKLR which was adopted in *MSV v SJ v & another* [2015] eKLR where it was stated that:

“In considering a claim for maintenance, regard must be had to the provisions of article 45(3) of the Constitution of Kenya which recognizes that “parties to a marriage are entitled to equal rights at the time of the marriage, during marriage, and at the dissolution of the marriage ...it relates to and recognizes personal rights of each spouse to enjoy equal rights to property and personal freedoms and to receive equal treatment without discrimination



on the basis of gender and without being shackled by repugnant cultural practices or social prejudices. Article 45(3) is in harmony with article 21(3) of the Constitution which enshrines equality of men and women and specifically states that “women and men have the right to equal treatment.....the age-old tradition in which men were deemed to be the sole bread winners and to carry the burden of maintaining their spouses does not hold true anymoreNo spouse who is capable of earning should be allowed to shirk his or her responsibility to support himself or herself or turn the other spouse into a beast of burden but where a spouse deserves to be paid maintenance in the event of divorce or separation, the law must be enforced to ensure that a deserving spouse enjoys spousal support so as to maintain the standard of life he or she was used to before separation or divorce. The financial capacity of the spouses has to be examined before the court makes a finding as to whether a spouse should pay maintenance and if so how much ...”

It was further held that: -

“neither alimony nor maintenance should be paid as a matter of course. It should not be used as a field where spouses cash in on their partners. It should be established that the party claiming such alimony or maintenance is incapacitated to make his/her own earnings and therefore deserves the support of the other partner.”

- 11) It is to be remembered that considerations for granting alimony include the income or earning capacity of the parties, the financial needs, obligations, or responsibilities which each party has or is likely to have in the foreseeable future.
- 12) All the children of the petitioner are adults with capability to support themselves and in her own words also support her. None of them depends on either the Petitioner or the Respondent and whatever earnings Petitioner receives from the rental houses is for her own exclusive use.
- 13) As was clearly admitted in her evidence, petitioner did not file bank statements for the period 2019 to date to support her contention that she only collects 40,000/- per month from the 34 rental houses on LR. No. Ntima/Ntakira/XXX.
- 14) In *PKM v R PM* [2017] eKLR the Court of Appeal explained the purpose of filing these affidavits as follows:

“The provisions in Rule 44 of the Matrimonial Causes Rules requiring spouses to file affidavits setting out full particulars of property and income (generally referred to as affidavit of means) where alimony or maintenance is sought must be seen in this light: They are to assist the court to make an informed decision.....”

- 15) The need for information on the income of the party against whom the order of alimony was sought is intended to assist the court come up with an informed decision as to whether, compared to her admitted earnings, petitioner is deserving of an order of alimony and the amount payable if any. Petitioner failed to provide this information and since a figure cannot be plucked from the air and imposed on the respondent, I find that petitioner has failed to demonstrate that she is deserving of an order of alimony.
- 16) Accordingly, and for the reasons set hereinabove, it is hereby ordered:
 - 1) Both the Petition and Cross-Petition are allowed and the marriage between the Petitioner and the Respondent is hereby dissolved



- 2) Decree nisi shall issue and become absolute in 30 days
- 3) The prayer for alimony is dismissed
- 4) Each party shall bear its own costs

DATED AT MERU THIS 30TH DAY OF JUNE , 2022

T. W. CHERERE

JUDGE

Appearance

Court Assistant - Morris Kinoti

For Appellant - Mr. Kirimi for Kinyanjui, Kirimi & Company Advocates

For Respondent - Mr. Thuku for Kivuva Omuga & Co. Advocates

