



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

FAMILY DIVISION

MISCELLANEOUS APPLICATION NO. E029 OF 2021

IN THE MATTER OF A DECREE OF DISSOLUTION OF MARRIAGE ISSUED

FROM THE WIESBADEN LOCAL COURT FAMILY COURT, GERMANY

IWN.....APPLICANT

V E R S U S

HJC.....RESPONDENT

JUDGMENT

(1) Before this court is the Ex-parte Notice of Motion dated 21st February 2021 in which the Applicant IN seeks the following orders:-

“THAT the Honourable Court do recognize sand adopt the Decree of dissolution of marriage issued on 25th February 2020 to the Applicant and the Respondent at the Wiesbaden Local Court Family Court Germany in Case No. 532F 102/195.”

(2) The Application was premised upon **Articles 2(5) and (6) of the Constitution of Kenya 2010, Section 67 of the Marriage Act 2014, Sections 1A, 1B and 3A of the Civil Procedure Act 2010, Order 50 Rule 1 of the Civil Procedure Rules** and all enabling provisions of the law, and was supported by the Affidavit of even date sworn by the Applicant.

(3) The Application was argued orally before the Court on 24th June 2021. The Applicant avers that she is a Kenyan citizen who got married to one **HJC** a German National on 16th December 2015 at the Registrars Office in Mombasa. Following their marriage ceremony the Applicant moved to Germany to reside with her husband.

(4) However the marriage later broke down irretrievably and eventually Divorce proceedings were commenced at the **Wiesbaden Local Family Court in Germany** and a Decree of Dissolution of the marriage was finally issued on 25th February 2020.

(5) The Applicant avers that the **Wiesbaden Local Family Court** is a competent Court with requisite jurisdiction to hear and determine Divorce Cases. That the Decree issued by the Court in Germany is valid and effective both within the jurisdiction of Germany and also within the **European Union**. The Applicant prays that this application be granted in the interest of justice.

(6) I have considered the present application as well as the Affidavit in Support. I have also perused the case of **PM –VS- VM [2018]eKLR** which authority was filed in support of 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) Under the above provision of law, the requirement that there be reciprocity in the recognition and registration of foreign judgments as provided under the **Foreign Judgments (Reciprocal Enforcement Act) 1984** is not mandatory.

(9) From its wording **Section 67** envisages the recognition of all foreign judgments relating to matrimonial proceedings without there being the need to demonstrate reciprocity. All that is required is that there be evidence to show that either party was domiciled in the country where the Decree was made and that the Court which issued the Decree had jurisdiction to do so. Secondly it must be shown that the Decree of annulment, divorce or separation was effective in the country of domicile.

(10) From the material availed to Court the Divorce Decree in question was issued in **Germany**. (A copy of the Decree is Annexure 'IN' to the Notice of Motion dated **21st February 2021**). This Court has no reason to doubt that the Court in Germany had requisite jurisdiction to issue the said Decree. The Applicant averred that after the solemnization of the marriage in **Mombasa**, she moved to live with her spouse in Germany where the couple resided for over **five (5)** years and were therefore '**domiciled**' in Germany. To that extent the divorce orders issued in Germany are recognizable by the Kenya Courts.

(11) 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.”

(12) In handling a similar case in which he recognized foreign judgment entered in **U.S.A** in the case of **M.N.M vs PNM (2016)eKLR**. **Hon. Justice Musyoka** stated as follows:-

“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.”

The Honourable Court went further to say:-

“... it was suggested that foreign judgments in matrimonial cause are not recognized in Kenya. That cannot be the correct position.”

(13) Finally I find that under the **Marriage Act 2014** Foreign Judgments annulling marriages or dealing generally with matrimonial proceedings are recognized in Kenya. Accordingly I find merit in the present application and the same is allowed as prayed. In conclusion I make orders that:-

(1) The Decree of dissolution of marriage issued on 25th February 2020 to the Applicant and the Respondent at the Wiesbaden Local Family Court in Case No. 532 F 102/19 S in Germany in Case No. 532F 102/95 be and is hereby adopted by the High Court in Kenya.

(2) No orders on costs.

DATED IN NAIROBI THIS 28TH DAY OF JUNE, 2021.

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MAUREEN A. ODERO

JUDGE