



PKC v JJC (Divorce Cause E025 of 2023) [2024] KEHC 1392 (KLR) (16 February 2024) (Ruling)

Neutral citation: [2024] KEHC 1392 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
DIVORCE CAUSE E025 OF 2023
JRA WANANDA, J
FEBRUARY 16, 2024**

BETWEEN

PKC APPLICANT

AND

JJC RESPONDENT

RULING

1. By the Notice of Motion dated 16/05/2023 expressed to have been brought under Section 61 of the Marriage, 2014, and filed through Messrs Martim & Co the Applicant seeks the following orders:
 - i. [.....] Spent.
 - ii. [.....] Spent.
 - iii. The Honourable Court recognizes and adopts the dissolution of marriage decree given to the Applicant and the Respondent in the State of Michigan in the Circuit Court for the County of Kent before Single Judge Hon. Alida J. Bryant on the 9/7/2023.
 - iv. Any further orders that the Court may deem fit.
2. The Application is premised on the grounds on the face thereof and is supported by the Affidavit sworn by the Applicant, PK.C.
3. In the Affidavit, the Applicant deponed that the Circuit Court for the County of Kent in the State of Michigan has issued a divorce decree of his marriage with the Respondent, that Section 61 of the Marriage Act provides for the recognition of foreign dissolution of marriages, that the marriage has been dissolved and he wants to move on with his life, and that there is no known reason in law impeding the registration of the marriage dissolution in Kenya.



4. Pursuant to directions given by the Court, the Applicant’s Counsel swore the Affidavit of Service filed on 14/11/2023 indicating that he served the Respondent with the instant Application via email. The Respondent did not however file any response and has so far not taken part in these proceedings.
5. Pursuant to further directions given by the Court, the Applicant’s Counsel filed his Submissions on 6/2/2024.
6. In the submissions, Counsel for the Applicant cited Section 61 of the *Marriage Act* as read with Section 67 thereof and in what he described as an “off the cuff remark”, submitted that the heading of Section 67 which reads “Dismissal of petition deception or non-disclosure” is somewhat misleading as it creates a different impression to what is contained in the provision. He craved reliance on the body of the section and not the title to the said provision. Counsel reiterated that pursuant to the Court directions, the Respondent was served and added that the divorce proceedings dealt with the divorce and the sharing of the matrimonial property which was a result of a mediated settlement and that the divorce was granted. He then cited the cases of *MNM vs PNM* (2016) eKLR, *IWN vs HJC* (2021) eKLR and *PM vs VM* (2018) eKLR.

Analysis and Determination

7. Upon examination of the Pleadings, Affidavits, Submissions and the entire Record, I find the one broad issue that arises for determination in this matter to be “whether this Court should recognize and adopt the dissolution of marriage decree given in the State of Michigan in the Circuit Court for the County of Kent”
8. As aforesaid, the Application is brought under Section 61 of the *Marriage Act*. Generally, however, matters of recognition and adoption of Judgments or Court Orders from foreign jurisdictions in Kenya are governed under the *Foreign Judgments (Reciprocal Enforcement) Act*, Cap 43. On this issue, Muigai J in the case of *EMMH v RH* [2016] eKLR stated as follows:

“The *Foreign Judgments (Reciprocal Enforcement) Act*, Cap 43, as revised in 2012, makes provisions for the enforcement and recognition of foreign judgments.

The object of the Act is:

to make new provision in Kenya 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 18 of the said *Act* provides that:

- (1) Subject to this section, a judgment of a designated court shall be recognized in any court in Kenya as conclusive between the parties thereto, as to the matter adjudicated upon, in all proceedings (no matter by which of the parties in the designated court they are instituted) on the same cause of action and maybe relied upon by way of defence or counterclaim in those proceedings.
- (2)

On the other hand, as regards Marriages and Divorces, the *Marriage Act*, 2014 gives parties the discretionary right to have decrees of annulment of dissolution registered. In that regard Section 61 provides thus:



- (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 the purpose.
- (3) An Application under this Section shall include-
 - (a) A copy of the decree and where the decree is not in an official language, a certified translation of the decree in an official language and in the prescribed form; and
 - (b) A declaration under the law of the country in which the decree was obtained made to a legal practitioner authorized to witness such a declaration that states the decree is effective in that country as if the marriage had been celebrated in that country.

It is apparent that there are two statutes governing the recognition and enforcement of foreign judgments and decrees in Kenya. However, the Court notes that the Marriage Act, was enacted later on in 2014 and it is the special law governing issues pertaining to marriages and divorce. This Court shall invoke the doctrine of implied repeal in interpreting the provisions of the two statutes and where any conflicts arise as in the instant case. New laws are given preference in case of an inconsistency with the older laws

9. On the same issue, Onyiego J in PM v VM [2018] eKLR stated as follows:

5. I have considered the application herein, affidavit in support and oral submissions by counsel for the applicant. Recognition of foreign judgments is provided under Section 9 of the Civil Procedure Act and Sections 3 and 13 of the Foreign Judgments (Reciprocal Enforcement) Act Cap 43. Under Section 3 of the Foreign Judgments and Reciprocal Act, divorce and separation proceedings are not listed as among those recognized for entry of such foreign judgments before any superior court in Kenya.

.....

8. However, the applicant would find solace under Section 67 of the Marriage Act which permits recognition of foreign judgments. The said section provides:

“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”.



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11. It should however be borne in mind that recognition of foreign judgments is not the same as registration. Whereas the provisions of *foreign judgments (reciprocal enforcement) Act* only regulates registration of foreign judgments, it implies that judgments arising out of matrimonial cause are registrable not for enforcement purposes given that matrimonial causes are declaratory in nature for dissolution of a marriage which is a personal right with no orders for enforcement unlike commercial transactions.
 12. However, 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”.
 13. While 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, Justice Musyoka had this to say:

“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”.
 14. It is therefore clear that under the *Marriage Act* 2014, foreign judgments annulling marriages or generally dealing with matrimonial proceedings are recognized in Kenya and the prayers herein are properly sought and therefore allowed
 10. Similarly, Musyoka J in *MNM v PNM* [2016] eKLR stated as follows:
 21. The appellant sought to persuade the court that the decree of the Florida court ought not to be recognized in Kenya. The provisions of the *Foreign Judgments (Reciprocal Enforcement) Act* were cited in that regard. It was suggested that foreign judgments in matrimonial causes are not recognized in Kenya. That cannot be the correct position. The *Foreign Judgments (Reciprocal Enforcement) Act* only regulates registration of foreign judgments, and its effect is that such judgments in matrimonial causes are not registrable. That is not the same as saying that such judgments are not recognized. Registration is necessary under the *Foreign Judgments (Reciprocal Enforcement) Act* for enforcement purposes. A decree for dissolution of marriage is not for enforcement, and therefore there really is no need for it to be registered under the *Foreign Judgments (Reciprocal Enforcement) Act*, for a divorce decree amounts to a mere declaration that a marriage has been dissolved.
 22. 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 envisage 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. Finally, Maureen Odero J in IWN v HJC [2021] eKLR stated as follows:

- (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.”

12. From the foregoing, it is evident that although the Applicant brought the present Application under Section 61 of the Marriage Act, he ought to have in fact come under Section 67 thereof. Under the Marriage Act 2014, “Recognition” of a foreign Judgment and “Registration” of such Judgment mean two different things. Section 61 deals with “registration” by the Registrar of Marriages of Divorce Judgments or Orders from foreign Courts. That is an exclusive preserve of the Registrar and in which the Court has no role whatsoever. It is Section 67 that deals with “recognition” of such Judgments and it is this role that the Court can be involved in.
13. The other notable omission in the Application before the Court is that from what has been presented before this Court, it is not possible to tell where and when the parties conducted the marriage. The Applicant has not shed any light on the same and the annexed Judgment also does not also disclose the information.
14. However, I will invoke Article 159(2) of the Constitution and consider substantive justice as opposed to procedural technicalities and excuse the said blunders or omissions.
15. Regarding the ingredients set out at Section 67(a) and (b) required to be met by the Applicant, I have no reason to doubt that either Applicant or the Respondent is domiciled in the country where that court has jurisdiction (United States of America) or had been ordinarily resident in Kenya for at least two years immediately preceding the date of institution of proceedings; or being a decree of annulment, divorce or separation, it is effective in the country of domicile of the parties or either of them.
16. In the end, I hold and find that under the Marriage Act 2014, foreign judgments annulling marriages or generally dealing with matrimonial proceedings are recognized in Kenya.

Final Orders

17. I accordingly allow the Application dated 26/05/2023 in the following terms:



- i. The consent Judgment and/or Decree of dissolution of marriage dated 9/7/2022 and issued to the Applicant and the Respondent at the Circuit Court for the County of Kent in Case No. 21-04929-DO in the United States of America before single Judge Hon. Alida J. Bryant, is hereby recognized and adopted as the decree of this Court.
- ii. There shall be no orders on costs.

DELIVERED, DATED AND SIGNED AT ELDORET THIS 16TH DAY OF FEBRUARY 2024

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WANANDA J.R. ANURO

JUDGE

