



REPUBLIC OF KENYA



MTM v SNM (Divorce Cause 2 of 2018) [2024] KEHC 8241 (KLR) (10 July 2024) (Judgment)

Neutral citation: [2024] KEHC 8241 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAROK
DIVORCE CAUSE 2 OF 2018**

F GIKONYO, J

JULY 10, 2024

BETWEEN

MTM PETITIONER

AND

SNM RESPONDENT

JUDGMENT

A marriage irretrievably broken down

1. Dissolution of marriage between the petitioner and the respondent has been sought in the petition dated September 13, 2018. The grounds of divorce are cruelty, desertion, and a marriage irretrievably broken down.
2. The respondent filed an answer to the petition and cross-petition dated 1st October 2018. She also prayed that the marriage between the petitioner and respondent be terminated.

Petitioner's case

3. The petitioner averred that his marriage with the respondent has irretrievably broken down due to irreconcilable differences contributed by the respondent
4. The petitioner testified and did not call any other witnesses in support of his case.
5. The petitioner testified that their union was blessed with one child, CM born in 1997.
6. It was the petitioner's testimony that during the subsistence of the marriage, the Respondent treated the Petitioner with cruelty, the principle particulars of being; -
 - a. That in or around 2000, the parties were residing at Lenana Estate in Narok when the Respondent started being disrespectful to the petitioner and being abusive.



- b. That in the same year 2000, the Respondent forcefully ordered the petitioner to quit their matrimonial house at Lenana Estate in Narok.
 - c. Deserted the petitioner without due cause for a period of eighteen years preceding the presentation of the petition.
7. The petitioner testified that the respondent was not cooking for him. She left for work without preparing breakfast and he used to take spaghetti. She asked him to get out of her house. He moved out and went to his home at Nairegia Enkare. He has never gone back since then. He was sent to work in Sierra Leone. He went to her parents but they were not able to resolve anything. They separated in the year 2001.

Respondent's case

8. The respondent testified and did not call any witnesses.
9. The respondent confirmed that they have been apart for almost 30 years.
10. The respondent testified that the petitioner left her to bring up their child alone. He rushed her through a wedding for his gain. She contends that it was a desertion from the beginning.

Directions of the court

11. The petitioner has not filed submissions. The respondent opted not to file submissions.

Analysis And Determination

12. This court has given due consideration to the petition, the answer to petition, and testimonies in court.

Issues

13. Issues for determination arising therefrom are: -
 - a. Whether the marriage between the Petitioner and the respondent should be dissolved
 - b. Who should bear the costs?
14. The applicable law is the Marriage Act No. 4 of 2014, "The Act". Section 98 (1) provides that:
A subsisting marriage which under any written or customary law hitherto in force constituted a valid marriage immediately before the coming to force of this Act is valid for the purposes of this Act.
15. It is not in dispute that a marriage subsisted which now the petitioner claims has irretrievably broken down and he lays blame on the respondent.
16. The marriage was solemnized in 1997.
17. Section 65 of the Marriage Act provides grounds for divorce in Christian marriages
65. Grounds for dissolution of a Christian marriage
A party to a marriage celebrated under Part III 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 the children, if any, of the marriage;



- 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; or
 - e. the irretrievable breakdown of the marriage.
18. He who alleges must prove. The petitioner and the respondent must prove the grounds for dissolution of marriage set out in the petition and cross-petition, respectively.
19. The grounds for the divorce in the petition are desertion and cruelty.

Cruelty

20. Cruelty is defined by the *Black's Law Dictionary 8th ed* as “the intentional and malicious infliction of mental and physical suffering on a living creature.
21. The dictionary points out that physical cruelty involves actual violence.
22. It further defines “mental cruelty” in the following terms: -
- “As a ground for divorce, one spouse’s course of conduct (not involving actual violence) that creates such anguish that it endangers the life, physical or mental health of the other spouse.”
23. Justice G. B. M. Kariuki SC (as he then was) in *W.M. M v B.M.L [2012]* eKLR was of the view that:
- “Courts have avoided formulation of an exhaustive definition of cruelty. Acts of cruelty, like acts of negligence in the law of torts, are said to be infinitely variable.”
24. Justice G.B.M. Kariuki went on to state that: -
- “Conduct that may undoubtedly be cruel in one case may clearly not be cruel in another on account of differing circumstances.”
25. The learned judge stood guided by the finding by Sir Charles Newbold in *Colarossi v Colagrossi [1965] E. A 129* where it was held that:
- “no comprehensive definition of cruelty has ever been accepted as satisfactory – much depends on the habits and circumstances of the matrimonial life of the husband and wife, their characters, the normal mode of conduct one to the other, and the knowledge which each has of the true intention and feelings of the other. An essential element of every petition based on cruelty is, however, that the party seeking relief must prove actual or probable injury to life, limb, or health. For this reason, it is seldom indeed that a decree is granted upon a single act of cruelty though, should that act be serious enough and result in injury, then the court will grant the decree.”
26. Judge Kariuki referred to the House of Lords findings in *Gollins V Gollins [1963] 2 All E.R.966 H.L. [1964] AC 644* and *Williams v Williams [1963] 2 All ER 944 HC [1964] AC 694* which established that the balance in claims of cruelty as a ground for dissolution of the marriage was in favour of giving relief to a complainant in a situation which has become intolerable. That if the spouse causes injury to the complainant’s health or is likely to do so, “it will amount to cruelty if it is grave and weighty and is such that the Petitioner cannot reasonably be expected to put up with it or to tolerate it.”



27. It was further held that “A reasonable apprehension that injury will result if the conduct persists will suffice for the simple reason that the court will not wait for a spouse to be actually injured before affording such spouse relief.”
28. The petitioner alleges cruelty by the respondent. The petitioner contends that the respondent has been cruel to him by not cooking for him. In or around 2000, the parties were residing at Lenana Estate in Narok when the Respondent started being disrespectful to the petitioner and being abusive. That in the same year 2000, the Respondent forcefully ordered the petitioner to quit their matrimonial house at Lenana Estate in Narok.
29. The respondent stated that she was rushed into a marriage by the petitioner for his personal gain. To her the marriage was a desertion from the beginning. According to her, the two have been separated for the whole time they were married. And have been living their separate lives.
30. In this court’s opinion, the matters complained of cause extreme mental anguish and cruelty as defined by the Black’s Law Dictionary. They have further proved that they carry strong views against each other that can lead to further mental anguish.
31. The petitioner in his testimony stated that he has deserted his matrimonial home. This fact is admitted by the respondent. The claim falls under Section 65(c) of the Act hence the claim under this ground warrants a dissolution of the marriage
32. The marriage has broken beyond repair as the petitioner has moved out of the matrimonial home.
33. In this court’s considered view the relevant ground under Section 65 of the Act can be applied to the irreconcilability of differences between the parties. From the pleadings, it can be deduced that none of the parties is interested in a conciliatory process. There is also a subtle dislike the parties have displayed for each other which appears to be deep-seated.
34. From these, the marriage only exists in name and paper; a shell devoid of life or impetus of a marriage. Parties have lost all hope of being salvaged.
35. In this court’s view that, their differences are irreconcilable and the marriage has irretrievably broken down. An order of dissolution of marriage ought to be granted.
36. The marriage is hereby dissolved. The *Marriage Act* does not provide for a decree nisi. However, it is prudent that a decree nisi be issued followed by a decree absolute. Optimism is never absurdity. Tomorrow may bring new things. A decree nisi shall issue and become absolute after two months hereof.
37. Each party shall bear their own costs.
38. It is so ordered.

**DATED, SIGNED, AND DELIVERED AT NAROK THROUGH TEAMS APPLICATION,
THIS 10TH DAY OF JULY, 2024.**

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HON. F. GIKONYO M

JUDGE

In the Presence of: -

C/A: Otolu



Machoka for Githui for Respondent – Present

Petitioner: Absent

