



**IKT v GJK (Miscellaneous Application E020 of 2024)
[2024] KEHC 14231 (KLR) (9 October 2024) (Judgment)**

Neutral citation: [2024] KEHC 14231 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
MISCELLANEOUS APPLICATION E020 OF 2024**

G MUTAI, J

OCTOBER 9, 2024

**IN THE MATTER OF THE JUDGMENT OF THE COURT OF
THE FIRST INSTANCE, 26TH DIVISION, OF THE JUDICIARY
OF THE REPUBLIC AND CANTON OF GENEVA, SWITZERLAN**

BETWEEN

IKT APPLICANT

AND

GJK RESPONDENT

JUDGMENT

1. The Applicant married the Respondent on 26th April 2008 at Karen Community Church, Nairobi. At the time they solemnized their union, the Applicant, a journalist, resided in Nairobi, Kenya, while the Respondent, an advocate, also lived in Nairobi. When they married, the parties were a bachelor and a spinster, respectively. Their union was blessed with three issues: YY, a son born on 11th March 2009; JY, a daughter born on 19th October 2011; and KYY, a son born on 1st April 2020. Both parties are Kenyan citizens currently domiciled in Switzerland. Their residences are at Avenue Petit-Senn, at 1225 Chene-Bourg, Geneva and Chemin de la Fontaine 4, at 1224 Chene-Bougeries, Geneva, respectively.
2. The marriage between the Applicant and the Respondent was dissolved on 29th March 2023 pursuant to the judgment of the Court of the First Instance, 26th Division, of the Judiciary of the Republic and Canton of Geneva. Vide the proceedings before me, the Applicant seeks to have the said judgment recognized and adopted by this honourable court.
3. The Applicant’s Notice of Motion is dated 13th February 2023. Vide the said Motion, he seeks the following four orders: -
 1. That the honourable court be pleased to recognize and register the dissolution of the marriage between the parties;



2. That the honourable court be pleased to adopt the judgment of the foreign court on the dissolution of the marriage between the parties herein;
 3. That the honourable court be pleased to give orders for the registration of the dissolution of the marriage between the parties; and
 4. That costs of the application be provided for.
4. The Applicant avers that the Court of the First Instance, 26th Division, of the Judiciary of the Republic and Canton of Geneva, Switzerland, 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. He also urges that the application be allowed in the children's best interest. The Applicant attached to his supporting affidavit a copy of the Certificate of Marriage, the parties' national identification cards, the judgment of the court in French, and a duly authenticated copy in English.
 5. Despite being served, the Respondent never appeared. The matter thus proceeded *ex parte* before me on 3rd October 2024. Ms Angira, the counsel for the Applicant, prayed that I allow the application. After hearing the submissions of the said counsel, I reserved my ruling for 9th October 2024.
 6. I have perused the said application and the affidavit in support thereof. I have also considered the exhibits annexed to it. I must now determine whether to 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 decree 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 Geneva, Switzerland, at the addresses I have stated above. I have no reason to doubt that the Court that issued the decree had the requisite jurisdiction. I have read the English language translation of the judgment. I note that the judgment adopted the divorce settlement reached by the parties in mediation, as an integral part of the judgment. I therefore find and hold that the judgment provided by the Applicant can be recognized in Kenya.
 9. Under Kenyan law, “recognition” of a divorce decree is different from “registration”. The Court in *IWN v HJC* [2021] eKLR stated, “It must be noted that recognition of foreign judgments is not the same as registration. Whilst the provisions of the [Foreign Judgments \(Reciprocal Enforcement\) Act](#) only regulate 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(1) of the Marriage Act, 2014, which provides that:-

“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 fully agree with what W Musyoka, J stated in MNM v PNM (2016) eKLR 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 the 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. Although the Applicant should have applied for the registration of the judgment by the Registrar of Marriage, under section 61 of the Marriage Act, 2014, rather than come to court as he has done, I see no harm in acceding to his request out of pure prudence. In the result: -

1. I recognize and adopt the judgment and or decree of divorce from the Court of the First Instance, 26th Division, of the Judiciary of the Republic and Canton of Geneva, Switzerland, signed on the 29th day of March 2023 and issued to IKT, the Applicant herein, and GJK, the Respondent herein;
2. I order the Applicant to register the said judgment and or 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.

12. Orders accordingly.

DATED AND SIGNED AT MOMBASA THIS 9TH DAY OF OCTOBER 2024. DELIVERED VIRTUALLY THROUGH MICROSOFT TEAMS.

GREGORY MUTAI

JUDGE

In the presence of Ms Angira for the Applicant;

No appearance for the Respondent; and

Arthur – Court Assistant.

