



REPUBLIC OF KENYA



**VK v KM (Divorce Cause 82 of 2000)  
[2023] KEHC 18408 (KLR) (Family) (19 May 2023) (Judgment)**

Neutral citation: [2023] KEHC 18408 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**FAMILY**

**DIVORCE CAUSE 82 OF 2000**

**MA ODERO, J**

**MAY 19, 2023**

**BETWEEN**

**VK ..... PETITIONER**

**AND**

**KM ..... RESPONDENT**

**JUDGMENT**

1. The petitioner herein VK filed in the High Court the Re-Amended Petition dated April 9, 2002 seeking the following orders:-
  - “ 1. That the marriage between the petitioner and the respondent be dissolved.
  2. That the legal custody of the children of the marriage between the petitioner and respondent namely CK, MK and MK be committed to the petitioner.
  3. That the respondent do provide maintenance for the children of the marriage.
  4. That the petitioner be granted maintenance or a secured provision.
  5. Costs of this suit.
  6. Any other or further relief that this court may deem just to grant.
  
2. The respondent KM in turn filed an Answer to petitioner and Cross-Petition dated August 1, 2000, and amended on October 8, 2002. In his cross-Petition, the respondent sought the following orders:-
  - “ a) The marriage between the petitioner and the respondent be dissolved.



- b) The legal custody of the minor children of the marriage be granted to the respondent.
  - c) Costs.”
3. The Petitioner did not prosecute her Petition. The respondent set down the matter for hearing of his cross-Petition on 3/11/2022. The petitioner was duly served vide the affidavit of service dated June 20, 2022. She did not appear on the hearing date and the matter proceeded in her absence.
4. The respondent told the court that he and the petitioner got married to each other on June 5, 1982. A copy of their marriage Certificate is annexed to the Petition. That their union was blessed with three (3) children namely:-
- (a) CK
  - (b) MK
  - (c) MK
- The three (3) children are now all adults.
5. The respondent told the court that the couple separated in the year 2000. That he now lives happily in Kwale with his daughter named C and his grandchildren.
6. The respondent states that he was not happy in the marriage due to the Petitioners drinking habits and due to the fact that she often went home late. That on one occasion the petitioner chased him out of the house during the night.
7. The only issue for determination here is whether the Cross-Petition filed by the respondent ought to be allowed.
8. The parties herein entered into a Christian marriage which was conducted at the Consolata Church in Nairobi. section 65 of the Marriage Act 2014 provides as follows:
- “65. 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 on the children of the marriage; or
  - c. Desertion by either party for at least three (3) years immediately preceding the date of presentation of the petition.
  - d. Exceptional depravity by the other party
  - e. The irretrievable breakdown of the marriage.” (own emphasis)
9. The couple herein have lived apart since the year 2000. There has been no cohabitation between the parties for over twenty (20) years. It is clear that the marriage has broken down irretrievably.
10. Both parties seek to have their union dissolved. There would be no point in keeping the couple tied to a marriage which neither wants to remain in. I find that the marriage has broken down and the prayer for dissolution is allowed.



11. The respondents prayer for custody of the children of the marriage is not tenable as the children are all now adults.
12. Finally I allow the respondents Cross-Petition. Decree nisi to issue to be made absolute within thirty (30) days. No orders on costs.

**DATED IN NAIROBI THIS 19<sup>TH</sup> DAY OF MAY 2023.**

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**MAUREEN A. ODERO**

**JUDGE**

