



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI

MISCELLANEOUS APPLICATION NO. E056 OF 2021

JOO.....APPLICANT

VERSUS

NAO.....RESPONDENT

RULING

1. Vide an *ex-parte* Notice of Motion application dated 28th February, 2021, the Applicant seeks that this court recognize and adopt the Certificate of Divorce issued to himself and Respondent in the Republic of Canada in the Superior Court at Montreal on 16th November, 2016. Further that the costs of the application be provided for. The application is premised on the grounds on the face thereof and supported by an affidavit sworn by the Applicant on 28th February, 2021.

2. The parties herein solemnized their union in a marriage celebrated in Nairobi within the Republic of Kenya on 16th October, 2010. The parties cohabited in Canada during the subsistence of their marriage. The marriage however irretrievably broke down culminating in the separation of the parties from 21st May, 2014. Thereafter, the Respondent petitioned the Superior Court in Canada seeking the dissolution of the marriage, which court, upon being satisfied by the grounds thereof entered judgment on the 20th October, 2016 dissolving the marriage absolutely, and a Certificate of Divorce dated 16th November, 2016 issued. Upon dissolution of the marriage, the Respondent remained in Canada where she is domiciled to date whilst the Applicant returned to Kenya.

3. The Applicant asserts that he seeks recognition of the Judgment and Certificate of Divorce issued by the Court in the Republic of Canada pursuant to **section 61** as read with **section 67** of the **Marriage Act**. Copies of both the Judgment and Certificate of Divorce are on record. He states that the Respondent holds no objection whatsoever to the recognition of the divorce in Kenya as she swore an affidavit in support of the application. Further that the application is brought in good faith and it would be justiciable for the application to be granted as prayed.

4. There is on record a statutory declaration sworn by the Respondent in which she confirms that the marriage between her and the Respondent was dissolved by a Superior Court in Canada and a Certificate of Divorce issued in furtherance thereto. She concedes the application and seeks that the Judgement and Certificate of Divorce issued in Canada be recognized by this court.

5. The recognition of divorce decrees issued by foreign courts is governed by **section 67** of the **Marriage Act, No. 4 of 2014** which provides that:

“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 the institution of the 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.”

The import of **section 67** is that parties seeking recognition of divorce decree need not demonstrate reciprocity but need only demonstrate that the requirements stipulated under the section have been met.

6. In the instant case, the Divorce Decree sought to be recognized was issued in the Republic of Canada. There is on record a copy of a Rectified Judgment of Divorce dated 20th October, 2016 issued by the Family Division of the Superior Court in the District of Montreal in the Province of Quebec in Canada and a Certificate of Divorce issued by the Superior Court on 16th November, 2016 pursuant to the

judgment of divorce. Prior to the dissolution of their marriage, the parties were domiciled in Canada. Upon dissolution of the marriage, the Applicant returned to Kenya while the Applicant remained in Canada where she is domiciled to date. It is therefore evident that the requirements under **section 67** of the **Marriage Act** have been met: that either party was domiciled in the country where the decree was made and that the decree of divorce was effective in the country of domicile. Additionally, since there is nothing to suggest otherwise, it is right to conclude that the court that issued the decree had the jurisdiction to so do. As such, the decree of divorce issued in Canada can be recognized in Kenya.

7. It is imperative to state that recognition of a foreign judgment is not similar to registration. The implication of the **Foreign Judgments (Reciprocal Enforcement) Act**, which regulates registration of foreign judgments, is that foreign judgments arising out of matrimonial proceedings should be registered, not for enforcement purposes since matrimonial causes are declaratory in nature, but for the dissolution of a marriage which is a personal right. (See – **IWN vs. HJC [2021] eKLR; P M vs. V M [2018] eKLR**).

8. Foreign divorce decrees are registrable in Kenya under **section 61** of the **Marriage Act**. Sub-section 1 thereof states thus:

“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.”

9. Speaking to this in **MNM vs. PNM [2016] eKLR**, Musyoka, J opined thus:

“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.”

10. Accordingly, the instant application seeking recognition and adoption of the divorce decree issued in Canada is proper and must succeed. Reasons wherefore, I hereby allow the Notice of Motion application dated 28th February, 2021 and direct as follows:

a. The Certificate of Divorce issued to NAO and JOO, the parties herein, in the Superior Court at Montreal, in the Republic of Canada, is hereby recognized and adopted as an order of this court.

b. There shall be no orders as to costs.

It is so ordered.

DATED SIGNED AND DELIVERED IN VIRTUAL COURT THIS 8TH DAY OF NOVEMBER, 2021

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L. A. ACHODE

HIGH COURT JUDGE

In the presence of.....Advocate for the Applicant.