



CML v BSK (Divorce Cause E006 of 2024) [2025] KEMC 10 (KLR) (30 January 2025) (Judgment)

Neutral citation: [2025] KEMC 10 (KLR)

**REPUBLIC OF KENYA
IN THE MARALAL LAW COURTS
DIVORCE CAUSE E006 OF 2024
AT SITATI, SPM
JANUARY 30, 2025**

BETWEEN

CML PETITIONER

AND

BSK RESPONDENT

JUDGMENT

1. By a petition for divorce dated 12th June, 2024 verified by affidavit of similar date, the Petitioner prayed for the following orders:
 1. That the marriage between the petitioner and the respondent herein solemnized on 22nd day of March 2023 be dissolved.
 2. The costs be in the cause.

Accompanying the Petition were:

 - i. Petitioner’s written statement dated 12/06/2024.
 - ii. Petitioner’s bundle of documents containing Child’s birth notification a copy of marriage certificate. Joint Parental Responsibility Agreement Screenshots of the Respondent conversation with other women Certificate of production of electronic evidence dated 17th July, 2024
2. The firm of Lenkidi Law Advocates represented the Petitioner.
3. The Respondent entered appearance through the firm of Kihoro Kimani & Associates dated 13th August, 2024. He filed an Answer to Petition and A Cross-Petition dated 23rd August, 2024 duly verified by an affidavit praying for:
 - a. The cross—petition be allowed.



- b. The marriage between Petitioner and Respondent be dissolved.
 - c. The petitioner to pay for the costs for the petitioner and the cross-petition.
4. The matter was certified ready for hearing when the petitioner testified.

The Petitioner's Case

5. CML adopted her witness statement. By it he told the court that she got married to the respondent/cross-petitioner on 22nd March, 2023 before the Deputy County Commissioner and were issued with a marriage certificate. They cohabited as husband and wife and their union was blessed with 1 issue KKK.
6. The petitioner told the court that after the birth of their child their marriage started experiencing difficulties but she had the elders mediate over their differences and they continued with their cohabitation. Subsequently, he exhibited violence and threats to her. She also discovered that he was unfaithful to her since he was in a love relationship with other women. This discovery was from his mobile phone chats with other women. Following this, the love, trust and respect irretrievably broke down leading to separation. They also pursued their fallout over the child custody with the children officer. She produced the above-listed documents in evidence.
7. In cross-examination by the cross-petitioner's advocate, the following came to light: They separated in January, 2024 She had not produced in court the Occurrence Book entries to prove her reporting to the police his alleged violence The petitioner and the respondent were employed by the same employer although they worked in different sections. She admitted that she had not produced the minutes of the elders' mediation She admitted that the respondent's mobile phone number was not reflected in the screenshots The certificate of the production of electronic evidence did not capture the phone number of the respondent herein.
8. In re-examination, she affirmed that she extracted the message from the respondent's phone where he had saved the name of his lover as reflected in the petition. She confirmed that the parties were living separately. At that stage the petitioner closed her case.

The Cross-petitioner's Case

9. The Respondent/Cross-petitioner adopted his written witness statement and produced the above-listed documents as his exhibits. He denied all the allegations in the petitioner. In his statement he told the court that the petitioner suddenly abandoned their marriage in January 2024 by feigning loss of love, trust and respect. He added that the petitioner had no evidence of his alleged violence towards her and that she was never submissive and never attempted to make their marriage work despite his many efforts to save the same. He told the court that she reported him to the police but after investigations the police found no evidence of threats or violence directed at the petitioner by the respondent and the matters were closed without prosecution. He stated that all the alleged WhatsApp screenshot messages were fabricated by the petitioner as an excuse to end their marriage yet he had loved her all along. He thus urged the court to allow his cross-petition and dissolve their marriage.
10. In cross-examination, the following came to light: -It was true that the named woman was his friend but denied infidelity He admitted that he tried arbitration but had not succeeded The petitioner reported him to the police
11. At that stage the respondent closed his defence/cross-petition.



Determination

12. The only issue for determination is whether or not the parties have made out a case for the dissolution of their marriage.
13. From the record, the marriage of the parties was celebrated on 22nd March, 2023. Their separation took place 9 months later in January 2024 or thereabouts. Thereafter, this petition was filed on 12th June, 2024 which was 15 months after the marriage had been celebrated and 6 months after separation. During these 15 months, the parties had only separated for 6 months – from January 2024 to June 2024. These facts are relevant and brought into application the provisions of section 66 of the *Marriage Act* 2022:
 66. Right to petition for separation or divorce
 - (1) A party to a marriage celebrated under Part IV may not petition the court for the separation of the parties or for the dissolution of the marriage unless three years have elapsed since the celebration of the marriage. (underlining mine)
 - (2) A party to a marriage celebrated under Part IV may only petition the court for the separation of the parties or the dissolution of the marriage on the following grounds—
 - (a) adultery by the other spouse;
 - (b) cruelty by the other spouse;
 - (c) exceptional depravity by the other spouse;
 - (d) desertion by the other spouse for at least three years; or
 - (e) the irretrievable breakdown of the marriage.
 - (3) The petitioner may file the petition with the court for the separation of the parties or the dissolution of the marriage despite any effort to reconcile the parties.
 - (4) The court may refer a matrimonial dispute that arises in a marriage celebrated under Part IV to a conciliatory process agreed between the parties.
 - (5) The proceedings for the dissolution of a marriage celebrated under Part IV may be adjourned for a period not exceeding six months as the court may think fit—
 - (a) for the court to make further enquiries; or
 - (b) for further attempts at reconciliation to be made by the parties to the marriage.
 - (6) A marriage has irretrievably broken down if—
 - (a) a spouse commits adultery;
 - (b) a spouse is cruel to the other spouse or to any child of the marriage;
 - (c) a spouse wilfully neglects the other spouse for at least two years immediately preceding the date of presentation of the petition; (underlining mine)
 - (d) the spouses have been separated for at least two years, whether voluntary or by decree of the court; (underlining mine)



- (e) a spouse has deserted the other spouse or at least three years immediately preceding the date of presentation of the petition; (underlining mine)
- (f) a spouse has been sentenced to a term of imprisonment for life or for a term of seven years or more;
- (g) a spouse suffers from incurable insanity, where two doctors, at least one of whom is qualified or experienced in psychiatry, have certified that the insanity is incurable or that recovery is improbable during the life time of the respondent in the light of existing medical knowledge; or(h)any other ground as the court may deem appropriate.

14. In the court's considered view, the petition and cross-petition are clearly premature because the law demands a minimum timeline of 3 years before the petition can be filed for divorce on the stated grounds. Even the ground of dissolution of marriage demands a minimum statutory period of 2years spousal neglect or 2 spousal separation and/or a minimum of 3 years desertion as the case may be.
15. In the petition and cross-petition both parties are relying on irretrievable breakdown of the marriage on the ground of spousal separation and spousal neglect which by the time of presentation of the petition had occurred for less than 6months. As shown in the excerpt of section 66 above, the law also demands a minimum neglect or separation period of 2 years immediately preceding the presentation of the petition. The rush and haste to dissolve their marriage suggest collusion on their part at this point.
16. In arriving at these conclusions, the court found useful guiding principles enunciated by the Court of Appeal in JSM –V- ENB (2015)eKLR (Makhandia, Ouko & MI'Inoti JJ.A.) where the superior court held that the divorce court must consider whether the statutory minimum period for the presentation of the petition had been attained.
17. Therefore, the court is precluded by law from going into the merits or demerits of the petition and cross-petition because the minimum statutory maturity period for the presentation of the petition has not been attained. In the result, both the petition and cross-petition must fail for being prematurely presented to the court. For that reason alone, the court dismisses both the petition and cross-petition. Each party shall bear his/her own costs. Right of appeal is 30 days.

DATED, READ AND SIGNED AT MARALAL LAW COURTS THIS 30TH DAY OF JANUARY, 2025

HON. T.A. SITATI

SENIOR PRINCIPAL MAGISTRATE

MARALAL LAW COURTS

Present

Petitioner

Mr. Lenkidi For The Petitioner

Mr. Kimani For The Cross Petitioner

Lepikas Court Assistant

