



**SMN v JNK (Divorce Cause E002 of 2024)  
[2025] KEMC 196 (KLR) (22 January 2025) (Judgment)**

Neutral citation: [2025] KEMC 196 (KLR)

**REPUBLIC OF KENYA  
IN THE LAMU LAW COURTS  
DIVORCE CAUSE E002 OF 2024  
FM MULAMA, RM  
JANUARY 22, 2025**

**BETWEEN**

**SMN ..... PETITIONER**

**AND**

**JNK ..... RESPONDENT**

**JUDGMENT**

**A. Introduction.**

1. The Petitioner filed the petition dated 4<sup>th</sup> September 2024 seeking a divorce on the grounds of cruelty, and irretrievable breakdown of the marriage. The petition is opposed and a cross petition has been raised by the Respondent. These proceedings proceeded as defended.
2. The brief facts of the case are as contained in the petition and answer to petition on the record. In summary SMN and JNK solemnized their marriage in Kenya on 10<sup>th</sup> December 2011 in the Catholic Church in Hindi. Both parties are domiciled in Kenya. The parties have no intentions of salvaging this marriage. The particulars of the grounds for divorce are outlined in the petition as follows:
  - a. Exceptional depravity of conjugal rights.
  - b. Cruelty.
  - c. Desertion.
3. At the hearing thereof, the petitioner relied on the petition and pleadings on record as evidence in support of the petition for divorce. It was her evidence that the marriage with the respondent has broken down irretrievably and the same should be dissolved.
4. Notably, the petitioner averred that the contents of the petition remained true as at the date of the hearing. The petitioner prayed that the petition be allowed as prayed. The respondent on the other



hand in his answer to petition and cross petition has also prayed for the dissolution of this marriage. In my view allowing the petition would serve the same purpose as allowing the cross petition. They all have the effect of dissolution of the marriage. I shall therefore consider them together.

5. The respondent in his cross petition also pleaded particulars of adultery/unfaithfulness and desertion and prays for a dissolution of the marriage on those grounds.

#### **B. Issue For Determination.**

- a. The issue for determination before this court is whether or not the marriage between the parties merits an order of divorce under the *Marriage Act*, 2014 (hereinafter, the Act).

#### **C. Analysis And Determination.**

6. The applicable law is section 65 of the *Act* (dissolution of Christian Marriages) which provides that the court may grant separation or divorce 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 3 years;
  - e. The irretrievable breakdown of the marriage.
7. I have considered the particulars of the grounds outlined in the petition and how those have contributed to the irretrievable breakdown of the marriage as contemplated under section 65 of the *Act*.
8. I have also noted the length of physical separation of the couple herein heading close to 8 years, the high levels of antagonism between the parties and relied on the reasoning of the court in *JSM v ENB* [2015]eKLR.
9. With respect to intention to salvage the union, I have noted the unequivocal terms of the Petition, answer Petition and testimony by parties on lack of such intention. It was clear from their testimony that no efforts have been made to reconcile.
10. The reasoning of the court in *ROK v MJB* [2017] eKLR and *TPH v NVS* [2017] eKLR cannot be emphasized enough. The courts held as follows;

“marriage is a voluntary union.....this court cannot by any means order or compel the parties to remain married when the petitioner has categorically stated that she wants the same dissolved...”
11. From the evidence it is clear and given the long duration of the parties being apart from each other, it is a clear indication that the marriage has irretrievably broken down and parties have no intention of ever being together. A marriage is deemed to have irretrievably broken down if “a spouses has deserted the other spouse for at least three years immediately preceding the date of presentation of the petition.” In this case the petitioner and the respondent have been away from each other for a period of 8 years.
12. Madan J. (as he then was), eloquently painted the classic picture of a marriage that has irretrievable broken down in *N V. N & Another*, [2008] 1 KLR (G&F) 16, ironically in 1977, long before



irretrievable breakdown of the marriage was recognized as a ground for divorce in Kenya. The venerable judge stated:

“This husband and wife have gotten themselves into a real grand-sized matrimonial tangle. In the words of the poet there are winds of sorrow where their voice was, silence where their love was. Their eyes loudly tell the story of their unhappiness. Their hearts are dried up and they do not stir for each other any more. They must have forgotten their reading from St Paul’s letter to the Corinthians that love is patient and kind; love does not keep a record of wrongs. Love never gives up; its faith, hope and patience never fail. This husband and wife look like being soaked in misery with their hearts dead for each other...Their own road of love has petered out, they are in a cul-de-sac of their own making of their marriage which has after some years turned out to be an intolerable any longer.”

13. It is thus the finding of the court that the same has broken down irretrievably and the same is due for dissolution. Both parties have also prayed for the same in the petition and cross petition.

#### **D. Conclusion And Disposition.**

14. Seeing as this court cannot force two adults to live together when there is no more love between them, I allow the petition dated 4<sup>th</sup> September 2024 on the following terms:
- a. The marriage between the two celebrated on 10<sup>th</sup> December 2011 be and is hereby dissolved.
  - b. Decree nisi do issue forthwith and thereafter to be made absolute in 30 days from the date of this judgment.
  - c. The cross petition is dismissed.
  - d. This being a family matter, each party to bear their own costs.
  - e. File is closed.
15. Orders accordingly.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT LAMU COURT THIS 22<sup>ND</sup> DAY OF JANUARY 2025.**

**F.M. MULAMA**

**RESIDENT MAGISTRATE.**

In the presence of;

Fathiya Loo-C/A

Ms.Kavaka for the Plaintiff.

JNK

