



NG v MMi (Divorce Cause E692 of 2022) [2023] KEMC 60 (KLR) (20 February 2023) (Judgment)

Neutral citation: [2023] KEMC 60 (KLR)

**REPUBLIC OF KENYA
IN THE MILIMANI COMMERCIAL CHIEF MAGISTRATE'S COURTS
DIVORCE CAUSE E692 OF 2022
JP ADUKE, SRM
FEBRUARY 20, 2023**

BETWEEN

NG PETITIONER

AND

MM RESPONDENT

JUDGMENT

1. The Petitioner filed the petition dated 3rd June 2022 seeking a divorce on the ground of irretrievable breakdown of the marriage and cruelty. Return of service on record shows that the respondent was served with the petition and annexures thereto. The respondent neither entered appearance nor filed a response. The petitioner filed an application seeking to have the petition proceed undefended. Return of service on record shows the petitioner served the respondent with the said application. These proceedings proceeded undefended.
2. The brief facts of the case are as contained in para 1-13 of the petition on record. In summary, NG and MM solemnized their marriage on 10th July 2010 at Nairobi Pentecostal Church in Kenya. They have one issue together from the union, a minor as at the date of writing this judgment. Both the Petitioner and respondent 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:
 1. Cruelty;
 2. Irretrievable breakdown of the marriage;
3. At the hearing thereof, the petitioner relied on her petition and verifying affidavit on record as evidence in support of the petition for divorce. Notably, the petitioner averred that the contents of the petition remained true as at the date of the hearing. She prayed for an order of dissolution of the marriage.
4. 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 (hereafter, the Act).



5. The applicable law is s.65 of the Act (on dissolution of Christian marriages) which provides that the court may grant separation or divorce on the following grounds:
 1. adultery by the other spouse;
 2. cruelty by the other spouse;
 3. exceptional depravity by the other spouse;
 4. desertion by the other spouse for at least 3 years;
 5. the irretrievable breakdown of the marriage.

6. 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 s.65 of the *Act*. I have also noted the length of physical separation of the couple herein (since 2017 to date) and relied on the reasoning of the court in *JSM vs ENB* [2015]. With respect to intention to salvage the union, I have noted the unequivocal terms of para 10 and 11 of the Petition on lack of such intention. The reasoning of the court in *ROK v MJB* and *TPH v NVS* 2017 eKLR cannot be emphasized enough-

“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...”

7. Seeing as this court cannot force two adults to live together when there is no more love between them, I allow the petition dated 3rd June 2022 before me on the following terms:
 1. the marriage between the two be and is hereby dissolved.
 2. Decree nisi do issue to be made absolute in 30 days.
 3. With respect to prayer (b) and (c) on the face of the petition, the petitioner to either file a formal suit before the High Court for grant of appropriate reliefs.
 4. This being a family matter, each party to bear own costs.

JUDGEMENT DATED AND SIGNED THIS 20TH FEBRUARY 2023 IN THE ABSENCE OF THE PARTIES AT 11.45AM

ADUKE JEAL PRAXADES ATIENO

SENIOR RESIDENT MAGISTRATE

