



NK v JM (Divorce Cause E1133 of 2021) [2023] KEMC 82 (KLR) (17 February 2023) (Judgment)

Neutral citation: [2023] KEMC 82 (KLR)

REPUBLIC OF KENYA
IN THE MILIMANI COMMERCIAL CHIEF MAGISTRATE'S COURTS
DIVORCE CAUSE E1133 OF 2021
JP ADUKE, SRM
FEBRUARY 17, 2023

BETWEEN

NK PETITIONER

AND

JM RESPONDENT

JUDGMENT

1. The Petitioner filed the petition dated October 25, 2021 seeking a divorce on the grounds of cruelty and irretrievable breakdown of the marriage. Return of service on record shows that the respondent was served with the petition and annexures thereto. The respondent entered appearance and filed an answer to the petition. These proceedings proceeded defended.
2. The brief fact of the case are as contained in para 1-11 of the petition on record. In summary, NK and JM solemnized their marriage in Kenya on April 26, 2014. Both parties are domiciled in Kenya. They have two issues together as at the date of conclusion of the hearing before me. 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) Irreconcilable differences /Irretrievable breakdown of the marriage;
3. At the hearing thereof, the petitioner relied on the petition and pleadings 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. The petitioner prayed that the petition be allowed as prayed. The respondent did not show up on the date of the hearing. I have seen return of service on record confirming the respondent was served with a hearing notice indicating the correct date of hearing. In view of this Petitioner Counsel applied to the court to have the defence case closed in their absence. The court allowed the application and reserved a date for delivery of judgment.



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.66 of the Act (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.66 of the Act. I have also noted the length of physical separation of the couple herein, the levels of antagonism between the parties and relied on the reasoning of the court in JSM v ENB[2015]. With respect to intention to salvage the union, I have noted the unequivocal terms of para 10 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 October 25, 2021 on the following terms:
 - (1) the marriage between the two be and is hereby dissolved.
 - (2) ecree nisi do issue to be made absolute in 30 days.
 - (3) This being a family matter, each party to bear their own costs.

ADUKE JEAL PRAXADES ATIENO

SENIOR RESIDENT MAGISTRATE

JUDGEMENT SIGNED AT NAIROBI THIS 17TH FEBRUARY 2023.

