



NSI v SGY (Divorce Cause E287 of 2022) [2023] KEMC 61 (KLR) (22 February 2023) (Judgment)

Neutral citation: [2023] KEMC 61 (KLR)

REPUBLIC OF KENYA
IN THE MILIMANI COMMERCIAL CHIEF MAGISTRATE'S COURTS
DIVORCE CAUSE E287 OF 2022
JP ADUKE, SRM
FEBRUARY 22, 2023

BETWEEN

NSI PETITIONER

AND

SGY RESPONDENT

JUDGMENT

1. The Petitioner filed the petition dated 2nd March 2022 seeking a divorce on the ground of irretrievable breakdown of the marriage. 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 1-9 of the petition on record. In summary, NSI and SGY solemnized their marriage on 24th May 2013 in Michigan, USA. They have two issues together from the union, all minors as at the date of conclusion of the hearing before this court. The Petitioner is domiciled in Kenya while the respondent is domiciled in Ethiopia. The parties have no intentions of salvaging this marriage. The particulars of the grounds for divorce are outlined in the petition as follows:
 1. Irretrievable breakdown of the marriage;

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.
3. 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).



4. The applicable law is s.40 of the Act (on recognition of Foreign marriages as civil marriages in Kenya) which provides that:
40. A civil marriage contracted in a foreign country shall be recognized as a valid marriage if—
- (a) it is contracted in accordance with the law of that country;
 - (b) it is consistent with the provisions of this Part; and
 - (c) the parties have the capacity to marry under this " Act.
5. From the documents available on record, it is apparent that the parties got married at Kentwood Village in Kent County in the State of Michigan, USA on 24th May 2013. Considering that there is a marriage certificate on record recognized by the government of Michigan, on the strength of section 40 and seeing as the petitioner satisfies the requirements of section 67 of the Act, I find that the marriage between these parties is validly recognized as a civil marriage in Kenya.
6. Having found as above, I proceed to determine the petition before me under section 66 (on dissolution of Civil Marriages) of the Act which provides that:
66. 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.
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 s.66 of the Act. I have also noted the length of physical separation of the couple herein and relied on the reasoning of the court in MNM v PNM [2016] eKLR. With respect to intention to salvage the union, I have noted the unequivocal terms of para 8 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..."
8. Seeing as this court cannot force two adults to live together when there is no more love between them, I allow the petition dated 2nd March 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. This being a family matter, each party to bear own costs.

JUDGEMENT DATED AND SIGNED THIS 22ND FEBRUARY 2023 AT 9.20AM IN THE ABSENCE OF THE PARTIES.

ADUKE JEAL PRAXADES ATIENO

SENIOR RESIDENT MAGISTRATE

