



REPUBLIC OF KENYA



IOM v CA (Divorce Cause E1090 of 2021) [2023] KEMC 102 (KLR) (20 March 2023) (Judgment)

Neutral citation: [2023] KEMC 102 (KLR)

**REPUBLIC OF KENYA
IN THE MILIMANI COMMERCIAL CHIEF MAGISTRATE'S COURTS**

DIVORCE CAUSE E1090 OF 2021

JP ADUKE, SRM

MARCH 20, 2023

BETWEEN

IOM PETITIONER

AND

CA RESPONDENT

JUDGMENT

1. The Petitioner filed the petition dated October 1, 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 never entered appearance. As a result of this, the petitioner filed an application seeking to have the matter proceed as an undefended suit. The court allowed the aforementioned application. These proceedings proceeded undefended.
2. The brief fact of the case are as contained in para 1-12 of the petition and answer to petition on record. In summary, IOM and CA solemnized their marriage in Kenya on July 10, 2015 at the Office of the Attorney General. Both the respondent and the petitioner are domiciled in Kenya intermittently. They have three issues together. 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.
4. The issue for determination before this court is whether or not the marriage between the parties merit an order of divorce under The Marriage Act, 2014 (hereafter, the Act).



5. The applicable law is s.69 of the Act (dissolution of Customary 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;
4. desertion;
5. the irretrievable breakdown of the marriage;
6. any valid ground under the Customary Law of the Petitioner;

The cabinet secretary may make regulations for the implementation of this section.

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.69 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 vs ENB[2015]. With respect to intention to salvage the union, I have noted the unequivocal terms of para 6 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...”

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 1, 2021 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 their own costs.

ADUKE JEAL PRAXADES ATIENO

SENIOR RESIDENT MAGISTRATE

JUDGEMENT SIGNED AT NAIROBI THIS 20TH MARCH 2023 IN THE ABSENCE OF THE PARTIES AT 2PM.

