



LAA v FOA (Divorce Cause E1334 of 2021) [2023] KEMC 75 (KLR) (1 March 2023) (Judgment)

Neutral citation: [2023] KEMC 75 (KLR)

REPUBLIC OF KENYA
IN THE MILIMANI COMMERCIAL CHIEF MAGISTRATE'S COURTS
DIVORCE CAUSE E1334 OF 2021
JP ADUKE, SRM
MARCH 1, 2023

BETWEEN

LAA PETITIONER

AND

FOA RESPONDENT

JUDGMENT

1. The petitioner filed the petition dated December 2, 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 facts of the case are contained in paragraph 1-18 of the petition on record. In summary, L.A.A and F.O.A solemnized their marriage on December 19, 2003 in Kenya at the Registrar's Office. They have three issues together as at the date of conclusion of the hearing before me. The parties have no intentions of salvaging the 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 the petition and the pleadings on record as evidence in support of the petition for divorce, notably the petitioner averred the contents of the petition remained true as at the date of the hearing. The petitioner prayed the petition be allowed as prayed. The respondent equally prayed for an order of divorce from this court.
4. The issues 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 section 66 (dissolution of civil marriages) of the Act 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 section 66 of the Act. I have also noted the length of separation of the couple herein, 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 paragraph 15 of the Petition before me. 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 December 2, 2021 on the following terms:
 1. The marriage between the two be and is hereby dissolved.
 2. The petitioner to pursue reliefs sought on prayers (2) and (3) on the face of the petition before the Children’s Court.
 3. Decree nisi do issue to be made absolute in 30 days.
 4. This being a family matter, each party to bear their own costs.

JUDGEMENT DELIVERED AND SIGNED AT NAIROBI THIS 1ST MARCH 2023 IN THE ABSENCE OF THE PARTIES AT 14.07PM.

ADUKE JEAL PRAXADES ATIENO

SENIOR RESIDENT MAGISTRATE

