



LNM v JMT (Divorce Cause E123 of 2022) [2023] KEMC 77 (KLR) (8 March 2023) (Judgment)

Neutral citation: [2023] KEMC 77 (KLR)

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

DIVORCE CAUSE E123 OF 2022

JP ADUKE, SRM

MARCH 8, 2023

BETWEEN

LNM PETITIONER

AND

JMT RESPONDENT

JUDGMENT

1. The petitioner filed the petition dated January 28, 2022 seeking a divorce on the grounds of cruelty and irretrievable breakdown of the marriage. Return of Service on record shows that the respondent was duly 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 as contained in paragraph 1-13 of the petition and the answer to petition on record. In record L.N.M and J.M.T solemnized their marriage in the year 2002 under the Kikuyu customary law. This fact is admitted by the respondent at para 2 of the Answer to Petition on record. They have three issues from the union. Both parties are domiciled in Kenya. The parties have no intentions of salvaging the marriage. The particulars for the grounds for divorce are outlined as follows:
 1. Cruelty.
 2. Irreconcilable differences/ 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 the petition for the divorce. Notably the petition 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 equally prayed for an order of divorce from this court.
4. The issue for determination before this court is whether or not the marriage between the parties merits an order of the divorce under The [Marriage Act](#) 2014.



5. The applicable law is section 69 of the Act (dissolution of Customary Marriage) which provides that the court may grant the separation of divorce on the following grounds:
 1. Adultery
 2. Cruelty
 3. Desertion
 4. Exceptional depravity
 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 69 of the Act. I have also noted the length of physical separation of the couple, 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 paragraph 11 of the petition on lack of such intention. The reasoning of the court in *ROK vs 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....” Since this court cannot force two adults to live together when there is no more love between them, I allow the petition dated 28th January 2022 of 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.

JUDGEMENT DELIVERED AND DATED AT NAIROBI THIS 8TH DAY OF MARCH 2023 IN THE ABSENCE OF THE PARTIES.

**ADUKE JEAL PRAXADES ATIENO
SENIOR RESIDENT MAGISTRATE**

