



PBA v JSM (Divorce Cause E137 of 2022) [2023] KEMC 78 (KLR) (6 March 2023) (Judgment)

Neutral citation: [2023] KEMC 78 (KLR)

REPUBLIC OF KENYA
IN THE MILIMANI COMMERCIAL CHIEF MAGISTRATE'S COURTS
DIVORCE CAUSE E137 OF 2022
JP ADUKE, SRM
MARCH 6, 2023

BETWEEN

PBA PETITIONER

AND

JSM RESPONDENT

JUDGMENT

1. The petitioner filed the petition dated 18th January 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 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 1-12 of the petition. In record P.B.A and J.S.M solemnized their marriage on 25th August 2004 at the registrar's office. They have two 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. Irretrievable breakdown of the marriage.
3. At the hearing thereof, the petitioner relied on the petition and the pleadings on record as evidence to 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 did not testify at the main hearing. The Defence elected to close its case without calling any witnesses. The court allowed the oral application by Defence Counsel.
4. The issue for determination before this court is whether the marriage between the parties merits an order of the divorce under The [Marriage Act](#) 2014.



5. The applicable law is section 66 of the Act (dissolution of Civil Marriages) which provides that the court may grant the separation of 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 physical separation of the couple (since 2016 to date), 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 9 in the petition of 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....” Seeing as this court cannot force two adults to live together when there is no more love between them, I allow the petition dated 18th 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.

ADUKE JEAL PRAXADES ATIENO

SENIOR RESIDENT MAGISTRATE

JUDGEMENT SIGNED AT NAIROBI THIS 06TH DAY OF MARCH 2023 IN THE ABSENCE OF THE PARTIES.

In the presence of :

1. Court Assistant: Benjamin Kombe

