



**SMK v MKM (Divorce Cause E084 of 2022) [2023] KEMC 95 (KLR) (6 March 2023) (Judgment)**

Neutral citation: [2023] KEMC 95 (KLR)

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

**DIVORCE CAUSE E084 OF 2022**

**JP ADUKE, SRM**

**MARCH 6, 2023**

**BETWEEN**

**SMK ..... PETITIONER**

**AND**

**MKM ..... RESPONDENT**

**JUDGMENT**

1. The petitioner filed the petition dated January 24, 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 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 1-10 of the petition. In record S.M.K and M.K.M solemnized their marriage on March 3, 2021 at the Office of the Registrar. They have one issue together from the union. Both parties are domiciled in Kenya. The parties have no intentions of salvaging the marriage. The particulars of the grounds for divorce are outlined in the petition as follows:
  1. 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. The respondent equally testified and prayed for an order of divorce.
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 2021 to date), the levels of antagonism between the parties and relied on the reasoning of the court in *JSM v ENB*[2015]. With respect to intention to salvage the union, I have noted the unequivocal terms of paragraph 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...” Seeing as this court cannot force two adults to live together when there is no more love between them, I allow the petition dated January 24, 2022 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.

**JUDGEMENT SIGNED AT NAIROBI THIS 06<sup>TH</sup> DAY OF MARCH 2023 AT 12.07PM IN THE ABSENCE OF PARTIES.**

**ADUKE JEAL PRAXADES ATIENO**

**SENIOR RESIDENT MAGISTRATE**

