



**SMK v MGN (Divorce Cause E107 of 2022) [2023] KEMC 76 (KLR) (9 March 2023) (Judgment)**

Neutral citation: [2023] KEMC 76 (KLR)

**REPUBLIC OF KENYA**  
**IN THE MILIMANI COMMERCIAL CHIEF MAGISTRATE'S COURTS**  
**DIVORCE CAUSE E107 OF 2022**  
**JP ADUKE, SRM**  
**MARCH 9, 2023**

**BETWEEN**

**SMK ..... PETITIONER**

**AND**

**MGN ..... RESPONDENT**

**JUDGMENT**

1. The Petitioner filed the petition dated 28<sup>th</sup> January 2022 seeking a divorce on the grounds of cruelty, adultery 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 para 1-35 of the petition on record and the answer to petition on file. In summary, SMK and MGN solemnized their marriage in Kenya on 4<sup>th</sup> August 2008. Both parties are domiciled in Kenya. They have two issues together, all minors as at the date of conclusion of the hearing before me. The parties have no intentions of salvaging this marriage. The particulars of the grounds for divorce are outlined in the petition as follows:
  1. Irreconcilable differences /Irretrievable breakdown of the marriage;
  2. Cruelty;
  3. Adultery;
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 relied on the pleadings on record and 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 divorce under The Marriage Act, 2014 (hereafter, the Act).
5. The applicable law is s.66 of the Act (dissolution of Christian 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 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 s.66 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 31 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 28<sup>th</sup> January 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.

**ADUKE JEAL PRAXADES ATIENO**

**SENIOR RESIDENT MAGISTRATE**

**JUDGEMENT SIGNED AT NAIROBI THIS 09<sup>TH</sup> MARCH 2023 IN THE ABSENCE OF THE PARTIES AT 10.50AM**

In the presence of :

1. Court Assistant: BENJAMIN KOMBE
2. Counsel for the Petitioner- N/A
3. Counsel for the Respondent: N/A

