



**SWC v BBN (Divorce Cause E005 of 2022) [2023] KEMC 92 (KLR) (8 March 2023) (Judgment)**

Neutral citation: [2023] KEMC 92 (KLR)

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

**DIVORCE CAUSE E005 OF 2022**

**JP ADUKE, SRM**

**MARCH 8, 2023**

**BETWEEN**

**SWC ..... PETITIONER**

**AND**

**BBN ..... RESPONDENT**

**JUDGMENT**

1. The petitioner filed the petition dated 7<sup>th</sup> December 2021 seeking a divorce on the grounds of desertion, 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 neither entered appearance nor filed a response. The petitioner filed an application seeking to have the petition proceed undefended. Return of service on record shows the petitioner served the respondent with the said application. These proceedings proceeded undefended.
2. The brief facts of the case are as contained in paragraph 1-12 of the petition. In record S.W.C and B.B.N solemnized their marriage on 7<sup>th</sup> September 2002 at the church in Nairobi Calvary Temple. They have nil 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. Desertion.
  2. Cruelty.
  3. 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.
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 65 of the Act (dissolution of Christian 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 65 of the Act. I have also noted the length of physical separation of the couple (since 2004 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 10 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 7<sup>th</sup> December 2021 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 08<sup>TH</sup> DAY OF MARCH 2023 AT 11.46AM IN THE ABSENCE OF THE PARTIES.**

**ADUKE JEAL PRAXADES ATIENO**

**SENIOR RESIDENT MAGISTRATE**

