



**SNG v SN (Divorce Cause E754 of 2021) [2023] KEMC 98 (KLR) (1 March 2023) (Judgment)**

Neutral citation: [2023] KEMC 98 (KLR)

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

**DIVORCE CAUSE E754 OF 2021**

**JP ADUKE, SRM**

**MARCH 1, 2023**

**BETWEEN**

**SNG ..... PETITIONER**

**AND**

**SN ..... RESPONDENT**

**JUDGMENT**

1. The petitioner filed the petition dated 12<sup>th</sup> July 2021 seeking a divorce on the grounds of cruelty, desertion, 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 neither entered appearance nor filed a response. The petitioner filed an application seeking to have the DC 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 on record. In summary SNG and SN solemnized their marriage on 19<sup>th</sup> December 2009 in church. The marriage took place in Kenya. Both parties are domiciled in Kenya. They have three issues together as at the date of conclusion of the hearing before me. The parties have no intentions of salvaging the marriage. The particulars of the divorce are outlined in the petition as follows:
  1. Cruelty
  2. Desertion.
  3. Irreconcilable differences/ 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.



4. The issue for determination before this court is whether the marriage between the parties merits an order of divorce under the Marriage Act 2014(hereafter the act)
5. The applicable law is Section 65(dissolution of Christian marriages) Act which provide 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 section 65 of the act. I also have noted the length of separation of the couple herein and relied on the reasoning of the court in JSM vs ENB (2015). With respect to the intention to salvage the union, I have noted the unequivocal terms in paragraph 11 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...”
7. Seeing this court cannot force two adults to live together when there is no more love between them, I allow the petition before me 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. With respect to prayer (b) on the face of the Petition on Alimony, Section 77 of the Act provides as follows:
    - (1) The court may order a person to pay maintenance to a spouse or a former spouse—
      - (a) if the person has refused or neglected to provide for the spouse or former spouse as required by the Act;
      - (b) if the person has deserted the other spouse or former spouse, for as long as the desertion continues;
      - (c) during the course of any matrimonial proceedings;
      - (d) when granting or after granting a decree of separation or divorce; or
      - (e) if, after making a decree of presumption of death, the spouse or former is found to be alive.
    - (2) The court may order the payment of maintenance to a spouse or former spouse where a decree of separation, divorce or presumption of death is issued by a foreign court and the court may declare that the decree of separation, divorce or presumption of death is effective for the purposes of this section.
8. Having found as above on the issue of the irretrievable breakdown of the marriage, I am persuaded that on a balance of probabilities, the petitioner should reasonably remain accustomed to the lifestyle



granted to her by the respondent during the marriage up until she re-marries or for a period of 10 years from the date of this judgment, whichever is earlier. In this regard, and noting that the Petitioner did not provide any documentary proof of her day-to-day expenditure/maintenance, I grant alimony payable monthly and amounting to the current gazetted minimum wage for residential housekeeper in Nairobi (as amended from time to time) for a period of 10 years from the date of this judgment or until the petitioner remarries, whichever is earlier.

9. This being a family matter, each party to bear own costs.

**ADUKE JEAL PRAXADES ATIENO**

**SENIOR RESIDENT MAGISTRATE**

**JUDGEMENT DATED AND SIGNED THIS 1<sup>ST</sup> MARCH 2023.**

In the presence of:

1. Court assistant: Benjamin Kombe
2. Counsel for the Petitioner-
3. Counsel for the Respondent-

