



WM v RM (Divorce Cause E435 of 2021) [2023] KEMC 104 (KLR) (22 March 2023) (Judgment)

Neutral citation: [2023] KEMC 104 (KLR)

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

DIVORCE CAUSE E435 OF 2021

JP ADUKE, SRM

MARCH 22, 2023

BETWEEN

WM PETITIONER

AND

RM RESPONDENT

JUDGMENT

1. The Petitioner filed the petition dated April 16, 2021 seeking a divorce on the grounds of adultery, 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 fact of the case are as contained in para 1-16 of the petition on record and the answer to petition on file. In summary, WM and RM solemnized their marriage at the Anglican Church in Kenya on February 16, 2013. Both parties are domiciled in Kenya. They have two issues together, all minors as at the date of writing this judgment. The parties have no intentions of salvaging this marriage. The particulars of the grounds for divorce are outlined in the petition as follows:
 1. Adultery;
 2. Cruelty;
 3. Irreconcilable differences /Irretrievable breakdown of the marriage;
3. At the hearing thereof, Petitioner Counsel and Respondent Counsel recorded a consent dated October 24, 2022, whose terms were endorsed as orders of this court. Parties filed and exchanged written submissions.
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.65 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.65 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 10 of the Petition and the answer to 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 April 16, 2021 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 c on the face of the Petition, I note that neither party filed a legible statement of income and earnings. The documents on file are illegible. In the absence of this, I am unable to arrive at a finding on alimony.
4. This being a family matter, each party to bear their own costs.

JUDGEMENT SIGNED AT NAIROBI THIS 22ND MARCH 2023 AT 8AM.

ADUKE JEAL PRAXADES ATIENO

SENIOR RESIDENT MAGISTRATE

