



WDO v IMM (Divorce Cause E841 of 2022) [2023] KEMC 64 (KLR) (1 March 2023) (Judgment)

Neutral citation: [2023] KEMC 64 (KLR)

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

DIVORCE CAUSE E841 OF 2022

JP ADUKE, SRM

MARCH 1, 2023

BETWEEN

WDO PETITIONER

AND

IMM RESPONDENT

JUDGMENT

1. The petition filed the petition dated 13th July 2022 seeking a divorce on grounds 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 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 this case are contained in paragraph 1-7 of the petition on record. In summary WDO and IMM solemnized their marriage in accordance with CAP 150 of the *Marriage Act* Laws of Kenya. This was done on 21st December 2012. They have three issues together from the union, all minors as at the date of conclusion of the hearing. Both the Petitioner and the Respondent are domiciled in Kenya. The parties have no intentions of salvaging the marriage. The particulars of the grounds for divorce are outlined as follows:
 1. Irretrievable breakdown of marriage;
3. At the hearing thereof, the petitioner relied on her petition and verifying affidavit on record as evidence in support of the petition for the divorce. Notably, the petitioner averred that the contents of the petition remained true as at the date of hearing. She prayed for an order of dissolution of the marriage.
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.



5. The applicable law is Section 65 of the (dissolution of Christian marriage) 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. Exception depravity by the other spouse
 4. Desertion by the other spouse
 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 the 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 unio, I have noted the unequivocal terms of para 5 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 as this court cannot force two adults to live together when there is no more love between them, I allow the petition dated 13th July 2022 on the following terms:
 1. The marriage between the two be 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.

JUDGMENT DELIVERED, DATED AND SIGNED AT NAIROBI THIS 01ST MARCH 2023 IN THE ABSENCE OF THE PARTIES AT 1343HRS.

**ADUKE JEAL PRAXADES ATIENO
SENIOR RESIDENT MAGISTRATE**

