



GKM v NNP (Divorce Cause E907 of 2021) [2023] KEMC 140 (KLR) (29 May 2023) (Judgment)

Neutral citation: [2023] KEMC 140 (KLR)

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

DIVORCE CAUSE E907 OF 2021

JP ADUKE, SRM

MAY 29, 2023

BETWEEN

GKM PETITIONER

AND

NNP RESPONDENT

JUDGMENT

1. The Petitioner filed the petition dated 24th August 2021 seeking a divorce on the grounds of 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 entered appearance and filed an answer to the petition. These proceedings proceeded defended.
2. The brief facts of the case are as contained in the petition and the answer to petition on record. In summary, GKM and NNP solemnized their marriage in Kenya on 5th January 2018 in Church in Transzoia in Kenya. 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. Desertion;
 2. 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. The respondent equally testified and prayed for an order of divorce and alimony. During cross-examination, the respondent confirmed that she wanted alimony because it is expensive to cater for the children and that she helped the petitioner secure his current job, wherein he earns more than she does.



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 9 of the Petition and para 16 of 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 24th August 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. I note that the respondent prayed for alimony to maintain herself and the children in evidence. From the pleadings, list of documents and further list of documents available on record as at the date of writing this decision, I have not seen any affidavit or statement of means on the pecuniary positions of both parties. I have not seen any certified copies of any bank statements or pay-slips of the parties. I have not seen any proof of any loan recovery deductions on the payslip of the respondent on account of allegations of a loan of KES 370,000/- advanced to the Petitioner. I am therefore unable to ascertain whether or not the respondent was wholly dependent on the petitioner. Consequently, I am unable to make a decision with incomplete information and make no award on this account. With respect to maintenance of the issues and to avoid duplicity of orders, I direct that the respondent pursues reliefs on maintenance for the children before the Children Court, Nairobi within 30 days from today.
4. With respect to bigamy, I note that while the same is an offence under Penal Code, the same can only be classified under adultery as a matrimonial offence under the Act seeing as it is not expressly provided for. I direct that the respondent pursues criminal redress under the Penal Code, Cap 63 Laws of Kenya.
5. The petitioner shall bear the costs of the petition.



ADUKE JEAL PRAXADES ATIENO

SENIOR RESIDENT MAGISTRATE

**JUDGEMENT SIGNED, DATED AND DELIVERED VIRTUALLY IN COURT AT NAIROBI
THIS 29TH MAY 2023 AT 9.30AM.**

In the presence of :

1. Court Assistant: Benjamin Kombe

