



KBR v PKR (Divorce Cause E518 of 2022) [2023] KEMC 142 (KLR) (23 May 2023) (Judgment)

Neutral citation: [2023] KEMC 142 (KLR)

**REPUBLIC OF KENYA
IN THE MILIMANI COMMERCIAL CHIEF MAGISTRATE'S COURTS
DIVORCE CAUSE E518 OF 2022**

JP ADUKE, SRM

MAY 23, 2023

BETWEEN

KBR PETITIONER

AND

PKR RESPONDENT

JUDGMENT

1. The Petitioner filed the petition dated 28th April 2022 seeking a divorce on the grounds of 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 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 para 1-13 of the petition on record. In summary, KBR and PKR solemnized their marriage on 28th March 2019 in India. They have NIL issues together from the union as at the date of writing this judgment. The Petitioner is domiciled in Kenya while the respondent is domiciled in India. The parties have no intentions of salvaging this marriage. The particulars of the grounds for divorce are outlined in the petition as follows:
 1. Irretrievable breakdown of the marriage;
 2. Cruelty;
3. At the hearing thereof, the petitioner relied on the petition and verifying affidavit 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, and 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 (hereafter, the Act).



5. The applicable law is s.40 of the Act (on recognition of Foreign marriages as civil marriages in Kenya) which provides that:

40. A civil marriage contracted in a foreign country shall be recognized as a valid marriage if—

- (a) it is contracted in accordance with the law of that country;
- (b) it is consistent with the provisions of this Part; and
- (c) the parties have the capacity to marry under this Act.

6. From the documents available on record, it is apparent that the parties got married at Rameshwar Mahadev Temple Palanpur Jakatnaka Surat in India on 05th April 2019. Considering that there is a marriage certificate on record recognized by the Registrar of Marriages Surat Municipal Corporation and the government of India, on the strength of section 40 and seeing as the petitioner satisfies the requirements of section 67 of the Act, I find that the marriage between these parties is validly recognized as a civil marriage in Kenya.

7. Having found as above, I proceed to determine the petition before me under section 66 (on dissolution of Civil Marriages) of the Act which provides that:

s. 66 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.

8. 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.66 of the Act. I have also noted the length of physical separation of the couple herein and relied on the reasoning of the court in MNM versus PNM [2016] Eklr. With respect to intention to salvage the union, I have noted the unequivocal terms of para 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...”

9. Seeing as this court cannot force two adults to live together when there is no more love between them, I allow the petition dated 28th April 2022 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. This being a family matter, each party to bear own costs.

Aduke Jeal Praxades Atieno

Senior Resident Magistrate

Judgement dated and signed this 23rd May 2023.

In the presence of:



- 1. Court Assistant: Benjamin Kombe**
- 2. Counsel for the Petitioner- N/A**
- 3. Counsel for the Respondent: N/A**

