



**RWG v BMN (Divorce Cause E892 of 2021) [2023] KEMC 123 (KLR) (23 May 2023) (Judgment)**

Neutral citation: [2023] KEMC 123 (KLR)

**REPUBLIC OF KENYA  
IN THE CHIEF MAGISTRATE'S COURT (MILIMANI LAW COURTS)**

**DIVORCE CAUSE E892 OF 2021**

**JP ADUKE, SRM**

**MAY 23, 2023**

**BETWEEN**

**RWG ..... PETITIONER**

**AND**

**BMN ..... RESPONDENT**

**JUDGMENT**

1. The Petitioner filed the petition dated 19<sup>th</sup> August 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 the petition and the answer to petition on record. In summary, RWG and BMN solemnized their marriage in Kenya on 04<sup>th</sup> May 1996 in Church in Karatina in Kenya. Both parties are domiciled in Kenya. They have one issue together, a minor 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. 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 was absent on the day of hearing. Petitioner counsel prayed that the court close the defence case in their absence. The court allowed the said oral application.



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 v ENB[2015]. With respect to intention to salvage the union, I have noted the unequivocal terms of para 12 of the Petition on lack of such intention. The reasoning of the court in ROK v MJB and TPH v NVS2017 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 19<sup>th</sup> 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. To avoid duplicity of orders, I direct that the Petitioner pursues reliefs on Prayer (b) on the face of the petition before the Children Court, Nairobi within 30 days from today.
  4. This being a family matter, each party to bear their own costs.

**ADUKE JEAL PRAXADES ATIENO**

**SENIOR RESIDENT MAGISTRATE**

**JUDGEMENT SIGNED, DATED AND DELIVERED VIRTUALLY IN COURT AT NAIROBI  
THIS 23<sup>RD</sup> MAY 2023 AT 12.30PM**

In the presence of :

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

