



FCB v JCK (Divorce Cause E439 of 2022) [2023] KEMC 189 (KLR) (27 July 2023) (Judgment)

Neutral citation: [2023] KEMC 189 (KLR)

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

DIVORCE CAUSE E439 OF 2022

JP ADUKE, SRM

JULY 27, 2023

BETWEEN

FCB PETITIONER

AND

JCK RESPONDENT

JUDGMENT

1. The Petitioner filed the petition dated 11th 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 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 answer to petition on record. In summary, FCB and JCK solemnized their marriage in Kenya on 27th June 2017 at the Office of the Attorney General. Both the petitioner and the respondent 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. Cruelty;
 2. Irreconcilable differences /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 date of hearing. I have seen return of service on record confirming service of the hearing notice on the respondent. As a result, Petitioner Counsel prayed that the court closes the defence case. The court granted this application. The respondent's case was closed without the respondent testifying.



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.66 of the Act (dissolution of Civil 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.66 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 the Petition and 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 11th April 2022 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. Prayers (b) and (c) on the face of the Petition to be ventilated before the Children Court, Nairobi.
 4. This being a family matter, each party to bear their own costs.

ADUKE JEAL PRAXADES ATIENO

SENIOR RESIDENT MAGISTRATE

JUDGEMENT SIGNED AT NAIROBI THIS 27TH JULY 2023 IN THE ABSENCE /PRESENCE OF THE PARTIES AT 11.30AM.

In the presence of :

Court Assistant: BENJAMIN KOMBE

Counsel for the Petitioner-

Counsel for the Respondent:

