



FNW v ZMS (Divorce Cause E1132 of 2022) [2023] KEMC 160 (KLR) (3 July 2023) (Judgment)

Neutral citation: [2023] KEMC 160 (KLR)

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

DIVORCE CAUSE E1132 OF 2022

JP ADUKE, SRM

JULY 3, 2023

BETWEEN

FNW PETITIONER

AND

ZMS RESPONDENT

JUDGMENT

1. The Petitioner filed the petition dated 21st September 2022 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 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 the petition on record. In summary, FNW and ZMS solemnized their marriage on 1st October 2011 in Church at the Catholic Church in Nairobi, Kenya. The parties have two issues from the union. Both the Petitioner and respondent are domiciled in Kenya. The respondent however resides in different countries on account of work. 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, witness statement 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.65 of the Act (on 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 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 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 21st September 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, DELIVERED AND SIGNED THIS 03RD JULY 2023 AT 10.00AM.

in the presence of:

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

