



GRD v RD (Divorce Cause E1072 of 2022) [2023] KEMC 196 (KLR) (31 July 2023) (Judgment)

Neutral citation: [2023] KEMC 196 (KLR)

REPUBLIC OF KENYA
IN THE MILIMANI COMMERCIAL CHIEF MAGISTRATE'S COURTS
DIVORCE CAUSE E1072 OF 2022

JP ADUKE, SRM

JULY 31, 2023

BETWEEN

GRD PETITIONER

AND

RD RESPONDENT

JUDGMENT

1. The Petitioner filed the petition dated 6th September 2022 seeking a divorce on the grounds of lack of communication 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 a response to the petition. The proceedings proceeded defended.
2. The brief facts of the case are as contained in the petition and answer to petition on record. In summary, GRD and RD solemnized their marriage on 18th January 2011 at the Office of the Registrar of Marriages. They have two issues together from the union. Both the respondent and the petitioner are domiciled in Kenya. The parties have no intentions of salvaging this marriage. The particulars of the grounds for divorce are outlined in the petition as follows:
 1. Lack of communication;
 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 for an order of dissolution of the marriage, that the respondent be ordered to pay the petitioner maintenance to cover medical costs and upkeep totaling Kshs 300,000/- per month and that the costs of the petition be provided for. The respondent equally testified and prayed for an order of divorce.



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 ss.66 and 77 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 section 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 JSM v 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 MK v GNK[2019] (based on the words of Bundesgerichtshof sixth civil senate on 22/2.1973 J2) defining a marriage institution cannot be emphasized enough-“Admittedly, marriage is a human institution which is regulated by law and protected by the Constitution and which in turn creates genuine legal duties, its essence however consists in the readiness found in morals, of the parties of the marriage to create and maintain it.”
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 6th September 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. With respect to Alimony, Section 77 of the Act provides as follows:
 - (1) The court may order a person to pay maintenance to a spouse or a former spouse—
 - (a) if the person has refused or neglected to provide for the spouse or former spouse as required by the Act;
 - (b) if the person has deserted the other spouse or former spouse, for as long as the desertion continues;
 - (c) during the course of any matrimonial proceedings;
 - (d) when granting or after granting a decree of separation or divorce; or
 - (e) if, after making a decree of presumption of death, the spouse or former is found to be alive.
 - (2) The court may order the payment of maintenance to a spouse or former spouse where a decree of separation, divorce or presumption of death is issued by a foreign court and the court may declare that the decree of separation, divorce or presumption of death is effective for the purposes of this section. Having found as above on the issue of the irretrievable breakdown of the marriage, I am persuaded that on a balance



of probabilities, the petitioner should reasonably remain accustomed to the lifestyle granted to her by the respondent during the marriage up until she re-marries or for a period of 10 years from the date of this judgment, whichever is earlier. In this regard, and noting that the Petitioner did not provide any documentary proof of her day-to-day expenditure/maintenance, I grant alimony payable monthly and amounting to the current gazetted minimum wage for residential housekeeper in Nairobi (as amended from time to time) for a period of 10 years from the date of this judgment or until the petitioner remarries, whichever is earlier.

4. This being a family matter, each party to bear own costs.

ADUKE JEAL PRAXADES ATIENO

Counsel for the Respondent:

Counsel for the Petitioner-

Court Assistant: Benjamin Kombe

In the presence of:

JUDGEMENT SIGNED AND DELIVERED IN NAIROBI THIS 31ST JULY 2023.

SENIOR RESIDENT MAGISTRATE

