



**MWW v PWW (Divorce Cause E1034 of 2021)
[2023] KEMC 254 (KLR) (27 July 2023) (Judgment)**

Neutral citation: [2023] KEMC 254 (KLR)

**REPUBLIC OF KENYA
IN THE MILIMANI COMMERCIAL CHIEF MAGISTRATE'S COURTS
DIVORCE CAUSE E1034 OF 2021**

JP ADUKE, SRM

JULY 27, 2023

BETWEEN

MWW PETITIONER

AND

PWW RESPONDENT

JUDGMENT

1. The Petitioner filed the petition dated 28th September 2021 seeking a divorce on the grounds of desertion, adultery and cruelty. 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 divorce cause proceed undefended. Return of service on record shows that 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, MWW AND PWW solemnized their marriage on 28th August 2010 at Hola KAG church in Tana River District, Coast, Kenya officiated by a marriage officer. Both the petitioner and respondent 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. Desertion;
 2. Adultery;
 3. Cruelty.
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 and for the respondent to pay the costs of this petition.

4. The issue of determination before this court is whether or not the marriage between the parties merits a divorce under The Marriage Act, 2014 (hereafter, the Act).
5. The applicable law is s.65(dissolution of Christian Marriages) of the Act 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. Desertion by the other spouse for at least 3 years
 4. Exceptional depravity by the other spouse
 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 v ENB*[2015]. With respect to salvage the union, I have noted the unequivocal terms of the Petition on lack of such intention. The reasoning of the court in *ENC v SNK*[2015] cannot be emphasized enough- “this is a marriage that appears to be on paper only, the same having irretrievably broken down on account of the desertion. The desertion has no doubt occasioned mental and emotional anguish and pain. I am therefore satisfied that the grounds for dissolution of the marriage have been established.”
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 28th September 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. This being a family matter, each party to bear own costs.

ADUKE JEAL PRAXADES ATIENO

SENIOR RESIDENT MAGISTRATE

JUDGEMENT DATED AND SIGNED THIS 27TH JULY 2023

In the presence of:

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

