



MCC v GNC (Divorce Cause E579 of 2022) [2023] KEMC 245 (KLR) (20 July 2023) (Judgment)

Neutral citation: [2023] KEMC 245 (KLR)

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

DIVORCE CAUSE E579 OF 2022

JP ADUKE, SRM

JULY 20, 2023

BETWEEN

MCC PETITIONER

AND

GNC RESPONDENT

JUDGMENT

1. The Petitioner filed the petition dated 17th May 2022 seeking a divorce on the ground of irretrievable breakdown of the marriage 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 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, MC and GC solemnized their marriage on 10th May 2010 in Church in Zambia. They have *nil* issues together from the union. The pleadings before me do not provide proof of domicile of the parties in Kenya. It is apparent that the respondent is resident in and domiciled in Zambia. From the pleadings available on file, it is not clear where the Petitioner works or how long he has been resident in Kenya. As at the date of writing this judgment, I am unable to ascertain the domicile of the Petitioner. According to the Petitioner, 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. Irretrievable breakdown of the marriage;
 3. Desertion;



3. At the hearing thereof, the petitioner relied on his petition 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. He 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 ss.40 and 22 of the Act (on recognition of Foreign marriages as civil marriages in Kenya) which provides that:
 40. A civil marriage contracted in a foreign country shall be recognized as a valid marriage if—
 - (a) it is contracted in accordance with the law of that country;
 - (b) it is consistent with the provisions of this Part; and
 - (c) the parties have the capacity to marry under this " Act.
 - s. 22 provides as follows: A marriage celebrated outside Kenya otherwise than in accordance with this Part, shall be recognized as a marriage under this Part if —
 - (a) it is contracted in accordance with the law of the country where it is celebrated and is consistent with the requirements of this Part;
 - (b) at the time of the celebration of the marriage, the parties to the marriage had the capacity to marry under the law of the country where the marriage is celebrated; or
 - (c) at the time of the marriage any party to the marriage is domiciled in Kenya, both parties had the capacity to marry under this *Act*.
6. From the documents available on record, it is apparent that the parties got married at Cathedral of the Holy Cross Zambia on 10th May 2010. Although there is a marriage certificate on record recognized by the government of Zambia, on the strength of section 22 and 67 and seeing as the petitioner does not satisfy the requirements of the Act on domicile, I find that the union of these parties cannot be dissolved by this court on account of domicile requirements.
7. Having found as above, I proceed to determine the petition before me on the following terms:
 1. Petition dismissed.
 2. This being a family matter, each party to bear own costs.

ADUKE JEAL PRAXADES ATIENO

SENIOR RESIDENT MAGISTRATE

JUDGEMENT DATED AND SIGNED THIS 20TH JULY 2023.

In the presence of:

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

