



RMK v BNW (Divorce Cause E1163 of 2022) [2023] KEMC 206 (KLR) (11 July 2023) (Judgment)

Neutral citation: [2023] KEMC 206 (KLR)

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

DIVORCE CAUSE E1163 OF 2022

JP ADUKE, SRM

JULY 11, 2023

BETWEEN

RMK PETITIONER

AND

BNW RESPONDENT

JUDGMENT

1. The petitioner filed the petition dated 29th September 2022 on grounds of adultery, cruelty and irreconcilable differences. 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. The petitioner filed an application seeking to have the petition proceed as a defended cause. Return of service on record shows the petitioner served the respondent with the said application. 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, RMK and BNW solemnized their marriage on 13th December 2008 at Langata Botanical Gardens in Nairobi. Both parties are domiciled in Kenya. The particulars of the grounds for divorce are outlined in the petition as follows:
 1. Adultery;
 2. Cruelty;
 3. Irreconcilable differences;
3. At the hearing thereof, the petitioner relied on her petition and verifying affidavit on record as evidence in support of the petition for divorce. She prayed for orders of dissolution of marriage and that each party bear their own costs of the suit. The respondent equally testified and prayed for an order of divorce from court.



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 section 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 a 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 in 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 and answer to petition on lack of such intention. The reasoning of the court in ROK v MJB [2017] eKLR 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 29th 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. This being a family matter, each party to bear their own costs.

ADUKE JEAL PRAXADES ATIENO

SENIOR RESIDENT MAGISTRATE

JUDGEMENT SIGNED AT NAIROBI THIS 11TH JULY 2023 IN THE PRESENCE OF THE PARTIES AT 11.30AM.

In the presence of :

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

