



**RMO v ZMM (Divorce Cause E1114 of 2021)  
[2023] KEMC 204 (KLR) (1 August 2023) (Judgment)**

Neutral citation: [2023] KEMC 204 (KLR)

**REPUBLIC OF KENYA  
IN THE MILIMANI COMMERCIAL CHIEF MAGISTRATE'S COURTS  
DIVORCE CAUSE E1114 OF 2021**

**JP ADUKE, SRM  
AUGUST 1, 2023**

**BETWEEN**

**RMO ..... PETITIONER**

**AND**

**ZMM ..... RESPONDENT**

**JUDGMENT**

1. The Petitioner filed the petition dated 7th October 2021 seeking a divorce on the grounds of cruelty and irretrievable breakdown of 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. 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, RMO and ZMM solemnized their marriage on 11th December 2017 at [Particulars withheld] SDA Church officiated by a marriage officer. They have two issues together from the union. 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. Cruelty;
  2. Irretrievable breakdown of 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 that the petition be allowed as prayed. The respondent was absent on the date of hearing. I have seen return of service on record confirming service of the hearing notice on the respondent. As a result, Petitioner Counsel prayed that the court closes the defence case. The court granted this application. The respondent's case was closed without the respondent testifying.



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(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;
  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 section 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 salvaging 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 [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 7th October 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 1ST AUGUST 2023**

In the presence of:

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

