



SM v KC (Divorce Cause E813 of 2022) [2023] KEMC 253 (KLR) (2 August 2023) (Judgment)

Neutral citation: [2023] KEMC 253 (KLR)

REPUBLIC OF KENYA
IN THE MILIMANI COMMERCIAL CHIEF MAGISTRATE'S COURTS
DIVORCE CAUSE E813 OF 2022
JP ADUKE, SRM
AUGUST 2, 2023

BETWEEN

SM PETITIONER

AND

KC RESPONDENT

JUDGMENT

1. The Petitioner filed the petition dated 29th June 2022 seeking a divorce on the grounds of 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 respondent was served 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 SM and KC solemnized their marriage on 16th April 2016 at (Particulars withheld), Ongata Rongai, Kenya 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. Adultery.
 2. 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, that custody of the children be granted to the petitioner, that the respondent pay the costs of this cause and for any other relief granted by the 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 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 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 intention to salvage 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 Nu [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...”
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 29th June 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 prayer b on the face of the petition, I direct that the petitioner files a suit at the Children Court Nairobi within 60 days from the date of this judgment, for appropriate reliefs.
 4. This being a family matter, each party to bear own costs.

ADUKE JEAL PRAXADES ATIENO

SENIOR RESIDENT MAGISTRATE

JUDGEMENT DATED AND SIGNED THIS 2ND AUGUST 2023

In the presence of:

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

