



**APK v JMK (Divorce Cause E1299 of 2022)
[2023] KEMC 39 (KLR) (27 November 2023) (Judgment)**

Neutral citation: [2023] KEMC 39 (KLR)

**REPUBLIC OF KENYA
IN THE MILIMANI COMMERCIAL CHIEF MAGISTRATE'S COURTS
DIVORCE CAUSE E1299 OF 2022
JP ADUKE, SRM
NOVEMBER 27, 2023**

BETWEEN

APK PETITIONER

AND

JMK RESPONDENT

JUDGMENT

1. The Petitioner filed the petition dated 31st October 2022 seeking a divorce on the grounds of cruelty, willful neglect and irretrievable breakdown of the marriage. Return of service on record shows that the respondent was served with the petition and annexures thereto. The respondent entered appearance and filed an answer to the petition. These proceedings proceeded defended.
2. The brief facts of the case are as contained in the petition and answer to petition on file. In summary, APK and JMK solemnized their marriage in Kenya on 07th July 1990 in Church in Kenya. Both parties are domiciled in Kenya and resident in different countries. The parties have no intentions of salvaging this marriage. The particulars of the grounds for divorce are outlined in the petition as follows:
 1. Irretrievable breakdown of the marriage;
 2. Cruelty;
 3. Willful neglect;
3. At the hearing thereof, the petitioner called one witness who testified. The petitioner adopted their witness statements on file and prayed for an order of divorce. The respondent elected not to testify at the hearing. The court allowed this application. I have read and considered all the submissions on record.
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 of the Act (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 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, the high levels of antagonism between the parties 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 and Answer 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 31st October 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.
4. File Closed.

ADUKE JEAL PRAXADES ATIENO

SENIOR RESIDENT MAGISTRATE

JUDGEMENT SIGNED AT NAIROBI THIS 27TH NOVEMBER 2023 AT 11AM.

In the presence of:

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

