



**CKD v KBKD (Divorce Cause E932 of 2022)
[2023] KEMC 24 (KLR) (6 November 2023) (Judgment)**

Neutral citation: [2023] KEMC 24 (KLR)

**REPUBLIC OF KENYA
IN THE MILIMANI COMMERCIAL CHIEF MAGISTRATE'S COURTS
DIVORCE CAUSE E932 OF 2022
JP ADUKE, SRM
NOVEMBER 6, 2023**

BETWEEN

CKD PETITIONER

AND

KBKD RESPONDENT

JUDGMENT

1. The Petitioner filed the petition dated 28th July 2022 seeking a divorce on the ground of cruelty 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 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, CKD and KBKD solemnized their marriage in a Hindu Temple in India on 18th November 2000. Both parties are domiciled in Kenya. As at the date of writing this judgment, the parties have one issue from the union. The parties have no intentions of salvaging this marriage. The particulars of the grounds for divorce are outlined in the petition as follows:
 1. Irreconcilable differences /Irretrievable breakdown of the marriage;
 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 that the petition be allowed as prayed. The respondent prayed against an order of divorce from this 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 70 of the Act (on dissolution of Hindu marriages) which provides that the court may grant divorce on the following grounds:
- (a) the marriage has irretrievably broken down;
 - (b) the other party has deserted the petitioner for at least three years before the making of the petition;
 - (c) the other party has converted to another religion;
 - (d) since the celebration of the marriage, the other party has committed rape, sodomy, bestiality or adultery;
 - (e) the other party has committed cruelty on the other; and
 - (f) the other party has committed exceptional depravity on the other.
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.70 of the Act (on dissolution of Hindu Marriages). I have also noted the length of physical separation of the couple herein (as at the date of writing this judgment) 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 the respondent's sentiments during the hearing on lack of such intention. The reasoning of the court in *ROK v MJB* [2017] 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...”

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 28th July 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. Regarding prayer (ii) on the face of the Petition, I direct that the Petitioner is at liberty to file a custody and maintenance suit in respect of the issue of the union before the Children Court Nairobi for appropriate reliefs. Regarding the prayer for alimony, I have not seen any documentary or evidentiary proof on record supporting the claim for alimony. I have also not seen any affidavits or statement of means confirming the financial muscles of the parties herein. I am therefore reluctant to grant any orders in this regard.

JUDGEMENT DELIVERED VIRTUALLY AND SIGNED AT NAIROBI THIS 06TH NOVEMBER 2023 IN THE PRESENCE OF THE PARTIES AT 11.30AM.

ADUKE JEAL PRAXADES ATIENO

SENIOR RESIDENT MAGISTRATE

