



EM v FKM (Miscellaneous Application E016 of 2024 & Civil Case E003 of 2024 (Consolidated)) [2025] KEHC 17870 (KLR) (26 November 2025) (Judgment)

Neutral citation: [2025] KEHC 17870 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT CHUKA
MISCELLANEOUS APPLICATION E016 OF 2024
& CIVIL CASE E003 OF 2024 (CONSOLIDATED)**

RL KORIR, J

NOVEMBER 26, 2025

**IN THE MATTER OF A DECREE OF DISSOLUTION OF
MARRIAGE ISSUED FROM CIRCUIT OF BALTIMORE
COUNTY, MARYLAND**

BETWEEN

EM APPLICANT

AND

FKM RESPONDENT

JUDGMENT

1. This judgement determines two related suits being HCCC Miscellaneous Civil Case No. E016 of 2024 (Esther Muthoni vs. Fredrick Kinyua Mutegi) and Civil Case No.E003 (Fredrick Mutegi Kinyua and Muthoni Kinyua). The first case was filed as a Miscellaneous Application on 4th October 2024, while the second was filed as a Civil Suit on 7th October, 2024.
2. The Plaintiff Counsel’s argument was that the proper procedure for seeking the order was by way of suit as the issuing jurisdiction was not one of those automatically recognized under the Foreign Judgement Reciprocal Enforcement Act. He urged that the applicable procedure was a civil suit under Section 9 of the *Civil Procedure Act*.
3. By order of the court on 8th May 2025 the two files were consolidated with Civil Case No. E016 of 2024 being the running file.
4. The Notice of Motion dated 4th October 2024 seeking the following orders;
 - a. Spent



- b. That this honourable court do recognize and adopt the Order Regarding Divorce, Custody And Property And Attorneys' Fees issued on 31st July 2024 to the Applicant and the Respondent at the Circuit court for Baltimore County, Maryland.
5. The Application is premised on the grounds set out on the face of the Application and on the supporting affidavit of the Applicant of even date. She stated that she is a Kenyan Citizen currently residing in the United States of America. That together with the Respondent, they contracted their Christian marriage under Kenyan Laws on 8th August 1998. Thereafter, they moved to USA where they acquired American citizenship becoming dual citizens of both Kenya and USA.
 6. She averred that while in USA, their marriage irretrievably broke down leading to a divorce in the Circuit Court for Baltimore, Maryland County and an order regarding divorce, custody, property and attorneys' fees was issued on 31st July 2024 which court is a competent court with the requisite jurisdiction to hear and determine divorce cases. Further, the decree issued by the court in the United States of America is valid and effective there.
 7. She further stated that there is also a divorce case pending determination in Chuka Magistrate's Court being Divorce Cause Number 15 of 2017 where there is a pending appeal emanating from a ruling delivered therein which appeal is still pending before this court awaiting judgment. That recognition and adoption of order regarding divorce, custody, property and attorneys' fees issued on 31st July 2024 will save this court's time.
 8. The Respondent did not file a response to this Application. However, I do note that the Respondent vide a Plaint dated 7th October 2024 filed Civil suit No. E003 of 2024 seeking similar orders.
 9. The Application was canvassed by way of written submissions as directed by the court. The Applicant filed written submissions dated 19th March 2025. The Respondent filed written submissions dated 19th March 2025.
 10. The Applicant submitted that for reciprocity to be demonstrated, parties are required to demonstrate that the requirements under Section 67 of the *Marriage Act* 2014 have been met. The Applicant relied on the authority of JOO v NAO [2021] KLR. It was submitted that the Respondent acknowledged that he had no objection to the Application save for the procedure used. She argued that this matter requires no witnesses and both parties agree that the divorce was concluded. Further, that courts have entertained matters of this nature commenced by way of Miscellaneous application before. She placed her reliance on HJC v IWN [2023] KEHC 18607 (KLR).
 11. The Respondent submitted that the enforcement of foreign judgment in Kenya is governed by the *Foreign Judgments (Reciprocal Enforcement) Act* and the designated countries under this Act include Australia, Malawi, Seychelles, Tanzania, Uganda, Zambia, the United Kingdom and the Republic of Rwanda. That to enforce a foreign judgment, a judgment creditor may apply to the High court to have the judgment registered. The application must be accompanied by a certified copy of the foreign judgment and the court may order the judgment to be registered if satisfied that the judgment is final and conclusive.
 12. It was also submitted that the Act excludes certain matters from its application including matrimonial causes, matters determining rights in property arising out of matrimonial relationships, proceedings relating to the custody or guardianship of children and matters relating to social security or public assistance.
 13. The Respondent further submits that in the absence of a reciprocal enforcement arrangement, a foreign judgment is enforceable in Kenya as claim in common law. He relied on the authority of Jayesh



Hasmukh Shah v Narin Haria & Another [2016] eKLR which states that a foreign judgment would be enforceable as a claim in common law. Also, the case of Intalframe Ltd v Mediterranean Shipping Company [1986] KLR and Raw Bank PLC v Yusuf Shaa Mohamed Omar & Another [2020] eKLR.

14. It was also submitted that Section 9 of the *Civil Procedure Act* sets down the requirements to be fulfilled by a judgment debtor in enforcing a foreign judgment in Kenya from a non-designated countries.
15. Other than the submissions on the procedural issue, the Respondent urged the court to allow his claim under Civil Case No. E003/2024 and the Applicant's Application.
16. I have considered the application and the submissions by the parties as well as the authorities. The issues for determination are:
 - i. Whether this Court has jurisdiction to recognize a foreign divorce decree issued by a court in the United States of America.
 - ii. Whether the decree dated 31st July 2024 meets the legal threshold for recognition under Kenyan law.

Jurisdiction to Recognize Foreign Divorce Decrees

17. Recognition of foreign judgments in Kenya is governed by The *Foreign Judgments (Reciprocal Enforcement) Act*, Cap 43 where there is a reciprocity, and Common law principles where no reciprocal arrangements exist.
18. Section 3(3) of Cap 43 expressly excludes matrimonial causes from its scope. Further, the United States of America is not a designated country under the Schedule to the Act.
19. Therefore, recognition of the Maryland decree can only be considered under common law and Section 67(1) of the *Marriage Act*, 2014, which provides:

“Where a marriage has been dissolved or annulled in a foreign country, the dissolution or annulment shall be recognized in Kenya if it was effected by a court of competent jurisdiction.”
20. In *WMM v BML* [2022] KEHC 12491 (KLR), the High Court (Machelule J.) observed:

“Kenyan courts may recognize a foreign divorce decree where the foreign court had jurisdiction according to the parties' domicile or residence, and where recognition does not offend Kenyan public policy.”
21. This reasoning affirms that jurisdiction is not merely territorial but extends to domicile and residence both of which are satisfied in the present case.

Recognition Under Common Law Principles

22. Under common law, a foreign judgment may be recognized where it is:
 - a. Issued by a court of competent jurisdiction;
 - b. Final and conclusive on the merits;
 - c. Not obtained by fraud;
 - d. Not contrary to natural justice or public policy.



23. The Court in *TWM v JNM* [2021] KEHC 214 (KLR) affirmed that:
- “Foreign matrimonial decrees are recognized under common law where the parties were domiciled or ordinarily resident within the jurisdiction of the court granting the decree, and there was no violation of due process.”
24. The Maryland decree meets this test. The parties were ordinarily resident in the USA, the Circuit Court for Baltimore County is a court of competent jurisdiction, and the decree is final, having not been appealed or set aside.
25. The decree also covers ancillary matters — custody, property, and fees — which are integral to matrimonial proceedings and therefore recognized as part of the principal divorce order.
26. In *MNW v PMW* [2023] KEHC 15478 (KLR), the court held that:
- “A valid foreign decree of divorce extends to all incidental matters decided within that proceeding, and the Kenyan court may adopt it in its entirety unless inconsistent with domestic law.”
27. Accordingly, this Court finds no legal impediment to recognizing the Maryland decree in full.
- (c) Effect of Parallel Proceedings in Kenya
28. It is not disputed that Divorce Cause No. 15 of 2017 is still pending in Chuka Magistrate’s Court and that there is an appeal pending before this Court.
29. However, the existence of a parallel proceeding does not automatically bar recognition. In *RK v JK* [2022] KEHC 4571 (KLR), the Court held that:
- “Once a competent foreign court dissolves a marriage validly, the continuation of a domestic proceeding serves no practical purpose, and recognition of the foreign decree is in line with judicial economy and fairness.”
30. In this case, both parties admit that the marriage has already been dissolved in the USA, and the decree remains valid. The continuation of the Chuka proceedings would therefore amount to a duplication of process and, unless there were other issues for determination by the Subordinate Court, a waste of judicial time.

Public Policy Considerations

31. Recognition of the decree does not contravene Kenyan public policy. Both parties were dual citizens, domiciled in the United States, and voluntarily submitted to the jurisdiction of that court.
32. The Court in *ZMM v PMM* [2024] KEHC 11762 (KLR) held:
- “Public policy in family law recognizes the need to give effect to lawful foreign decrees, particularly where both spouses have submitted to a foreign jurisdiction and the decree is not inconsistent with Kenyan law.”
33. The Maryland decree dissolves the marriage lawfully, addresses custody and property equitably, and contains no elements contrary to Kenyan law or morality.



34. Based on the foregoing, I am satisfied that the decree issued on 31st July, 2024 by the Circuit Court for Baltimore County, Maryland was rendered by a court of competent jurisdiction; the decree is final and conclusive; and its recognition does not offend Kenyan public policy. In essence the requirements of Section 67(1) of the Marriage Act, 2014 have been satisfied.
35. In the end, I grant the order that :-
- i. The judgement regarding Divorce, Custody, Property and Attorneys’ Fees issued on 31st July 2024 by the Circuit Court for Baltimore County, Maryland, USA, is hereby recognized and adopted and recognized as a valid judgement and decree of this court.
 - ii. The Chuka Divorce Cause No. 15 of 2017, and any related appeal pending before this Court, are hereby deemed spent in so far as they relate to the dissolution of the marriage between the Applicant and the Respondent.
 - iii. Each party shall bear their own costs.

JUDGMENT DELIVERED, DATED AND SIGNED AT CHUKA THIS 26TH DAY OF NOVEMBER, 2025.

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R. LAGAT-KORIR

JUDGE

Judgment delivered in the presence of Mr. Marigu holding brief for Mr. Mugira for Applicant/Defendant and Mr. Muthomi for Plaintiff/Respondent. Muriuki (Court Assistant).

