MB v JNJ (Miscellaneous Application E029 of 2025)
[2026] KEHC 2145 (KLR) (23 February 2026) (Ruling)

Neutral citation: [2026] KEHC 2145 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT MOMBASA

MISCELLANEOUS APPLICATION E029 OF 2025

G MUTAI, J

FEBRUARY 23, 2026

BETWEEN

MB ..... APPLICANT

AND

JNJ ..... RESPONDENT

RULING

1. The applicant, MB, also known as BMB, married JNJ on 16 February 2011 at the Registrar's Office in Mombasa. At the time of their marriage, they were 31 and 30 years old, respectively. The applicant avers that after the marriage, he and the respondent lived together as husband and wife, first for a short period in Kenya and thereafter in Finland. During coverture, they had 2 children.

2. The marriage between the applicant and the respondent subsequently broke down and was dissolved. The applicant averred that he and the respondents had irreconcilable differences that cannot be resolved. He stated that the dissolution of the marriage had already been effected in his country of residence and that he was now a single man, as evidenced by the documents he adduced, among which was an extract from the national population register. He averred that he wished to have the dissolution of their marriage recognized in Kenya. Mr. B averred that the court that dissolved his marriage to the respondent had the requisite jurisdiction to do so.

3. In her response, the respondent averred that she met the applicant in 2007 in Finland. They got engaged in 2009. Their marriage was celebrated on 16th February 2011 in Diani Beach in Kwale. She agreed with the applicant that they had 2 children together and that their marriage was dissolved pursuant to a matrimonial cause in Finland. She accused the applicant of not meeting his obligations as a parent, neglecting the children, and thus causing her to strain her finances. Further, he had refused to adhere to the terms of the divorce settlement, which provided for the division of the matrimonial properties equally.

4. The respondent expressed a fear that if the decree of dissolution of the marriage was adopted and recognized by this court before the applicant adhered to the settlement between them, she would be greatly prejudiced. She prayed that the application be declined as she stood to suffer irreparable loss if the degree of the dissolution of marriage was recognized as proposed.

5. The application was canvassed by way of written submissions. The applicant's counsel, in their submissions dated 24th November 2025, urged that the application be allowed. They identified the sole issue for determination as being whether the court should recognize and adopt the divorce decree issued in Sweden in the Attunda District Court, at Sollentuna.

6. It was contended that what was needed for a foreign divorce to be recognized was that either party was domiciled in the country where the decree was issued, and the court that issued the decree had jurisdiction to do so, and lastly, that the divorce decree was effective in the country where it was issued. Counsel contended that the decree issued by the District Court at Sollentuna was valid, final, and effective.

7. Counsel urged that the marriage between the parties had irretrievably broken down, and for that reason, the foreign decree should be recognized.

8. In the submissions dated 17th February 2026, the respondent did not deny that a final and effective decree of divorce was issued, nor that the formal legal threshold for recognition of a foreign decree had been met.

9. It was urged that whereas the court had jurisdiction to issue the orders sough it shouldn't do so without safeguards. The respondent's counsel submitted that the respondent had credible concerns that the applicant may deal with matrimonial property in a manner adverse to her interest, thereby undermining pending or anticipated proceedings touching on property distribution and parental responsibilities. She deprecated the disclosure of confidential private information, in particular, of her medical records.

10. Counsel prayed that the application be dismissed or, in the alternative, that this court exercise its equitable jurisdiction to ensure that the recognition of the decree does not occasion prejudice, facilitate dissipation of assets, or undermine pending proceedings touching on property distribution and custody.

11. What is clear from the foregoing is that both parties agreed that the marriage between them was dissolved by a court with jurisdiction, and that the decree of divorce is effective in Sweden. Parties further agree that when the decree was issued, at least one of them was domiciled in Sweden.

12. I have perused the said application and the affidavit in support thereof. I have also considered the exhibits annexed thereto. I must now determine if I should allow the application.

13. Section 67 of the *Marriage Act*, 2014, provides for the recognition of divorce decrees issued by foreign courts. It states that:

> " Where a foreign court has granted a decree in matrimonial proceedings, whether arising out of a marriage celebrated in Kenya or elsewhere, that decree shall be recognized in Kenya if—
>
> (a) Either party is domiciled in the country where that court has jurisdiction or has been ordinarily resident in Kenya for at least two years immediately preceding the date of institution of proceedings; or

(b) Being a decree of annulment, divorce, or separation, it is effective in the country of domicile of the parties or either of them."

14. The applicant is domiciled in Sweden. I have no reason to doubt that the Court that issued the decree had the requisite jurisdiction to do so. I have read the divorce order; the same appears to me to be in order. I therefore find and hold that the divorce order issued to the applicant in Sweden is capable of being recognized in Kenya. I must state, again, that the parties are in agreement on this.

15. Under the Kenyan law, "recognition" of a decree of divorce is different from "registration". The Court in IWN v HJC [2021] eKLR stated as follows:

> " It must be noted that recognition of foreign judgments is not the same as registration. Whilst the provisions of the *Foreign Judgments (Reciprocal Enforcement) Act* only regulate the registration of foreign Judgments, the implication is that Judgments arising out of matrimonial causes be registered, not for enforcement purposes, since matrimonial causes are declaratory in nature, but for dissolution of the marriage, which is a personal right. Foreign annulment and dissolution of marriage are now registrable under Section 61 of the *Marriage Act* 2014. Registration of such orders is a preserve of the Registrar of Marriages and not the Courts. For clarity purposes and avoidance of doubt, I wish to reproduce Section 61 of the *Marriage Act* 2014, which provides that: -
>
> > " Sub-Section (1) - "where a marriage celebrated in Kenya is annulled or dissolved by a Decree of a foreign Court, any party to the annulled or dissolved marriage may apply to the Registrar to register the Decree."

16. I am in full agreement with what W Musyoka, J stated in MNM v PNM (2016) eKLR to wit that: -

> " Foreign annulments and dissolution of marriages are now registrable under Section 61 of the *Marriage Act*, 2014. However, unlike the provisions in the *Foreign Judgments (Reciprocal Enforcement) Act*, which envisage adoption of such orders by the courts, the registration envisioned in Section 61 of the *Marriage Act* 2014 is by the Registrar of Marriages."

17. Although the law is clear enough, I note that the Registrar of Marriages has, in essence, created a requirement that the foreign dissolution of marriage must first be adopted/registered by the court before the formal registration under section 61 of the *Marriage Act* is done. This is unnecessarily burdensome to the parties who, upon the breakdown of their marriages, wish to move on. As far as I can tell, the *Marriage Act* has no such requirement. This is a situation that calls on this court to be prudent and facilitate access to justice and to avoid an unnecessary stalemate.

18. The respondent has requested this court to issue orders that will not interfere with her claims. With respect, I do not see how she will be prejudiced if the orders the applicant seeks are granted. To the contrary, recognition will enable her to pursue whatever claim she has against the applicant. Unfortunately, she appears to be using these proceedings for a collateral purpose, as leverage in the tussle between her and her former spouse.

19. The applicant seeks to have the foreign decree of divorce recognized by this Court. Upon consideration of the matter, I am inclined to allow the application. In the result: -

1. I recognize and adopt the divorce order issued by the Attunda District Court at Sollentuna, Sweden, vide which the marriage between the applicant and the respondent was dissolved;

2. I order the applicant to register the said decree/order of divorce with the Registrar of Marriages pursuant to section 61 of the *Marriage Act*, 2014; and

3. Each party shall bear its own costs.

20. It is so ordered.

DATED AND SIGNED IN MOMBASA, THIS 23RD DAY OF FEBRUARY 2026. DELIVERED VIRTUALLY THROUGH MICROSOFT TEAMS.

GREGORY MUTAI

JUDGE

In the presence of:

Mr. Kirui, holding brief for Mr. Moseti, for the Respondent;

No appearance for the Applicant; and

Ms. Bancy - Court Assistant.