



**JWK v PP (Miscellaneous Case E134 of 2022)
[2024] KEHC 2000 (KLR) (28 February 2024) (Ruling)**

Neutral citation: [2024] KEHC 2000 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
MISCELLANEOUS CASE E134 OF 2022
SN RIECHI, J
FEBRUARY 28, 2024**

BETWEEN

JWK APPELLANT

AND

PP RESPONDENT

RULING

1. The Applicant got married to the Respondent a Dutch by birth on 30th August,1994 at Tiwi Beach in Kwale County. Subsequent to solemnization of their marriage the couple resided in Kenya briefly and later shifted to the Netherlands where they have been residing.
2. On or about 2011 the marriage experienced irreconcilable differences and the applicant filed divorce proceedings before the District Court of Alkmaar. The marriage between the applicant and respondent was dissolved on 21st July,2011 and a Divorce Decree issued in Dutch language.
3. Thereafter the applicant sought the same to be translated into English and certified by the Ministry of Foreign Affairs and the Embassy of the Republic of Kenya in Netherlands.
4. Subsequently the applicant Vide an application dated 14th July 2022 seeks the following orders;
 - i. That the honourable court do recognize and adopt the divorce decree of dissolution of marriage issued to the applicant and the respondent by the District Court of Alkmaar in Netherlands on the 21st July,2011.
 - ii. That the Honourable Court do direct and order the Registrar of Marriages to registrar the adopted divorce decree between the applicant and the respondent in the register.
 - iii. That costs of this application be provided for.



5. The applicant avers that the District Court of Alkmaar dissolved their marriage on 21st July, 2011 and issued a Divorce Decree as evidenced by attached copy of Divorce Decree dated 21st July, 2011. The applicant avers that since the documents were issued in Dutch Language, the applicant sought for the same to be translated into English as evidenced by attached copy of translated orders. The applicant avers that she seeks to have this court adopt the divorce decree of dissolution of marriage issued by the District Court of Alkmaar in Netherlands and recognized by the Court of Kenya.
6. On 16th March 2023, this matter proceeded by way viva voce evidence. JWK testified that she is the applicant and the respondent is her ex-husband. She testified that they got married in 1994 and they have two boys namely SP and BP. The applicant testified further that they divorced in Netherlands in 2011 and she now need the official registration of divorce in Kenya.
7. PP testified that he know Junita and she is his ex-wife and mother of his children. He testified that that they married in 1994 at Tiwi Kwale. He testified that they have 2 sons and they divorced in 2011 in the Netherlands.
8. I have perused the said application and the affidavit in support thereof. I have also considered the exhibits annexed thereto. The main issue for determination is whether this court should allow the application.
9. Section 67 of the Marriage Act 2014 provides for the recognition of Divorce Decrees issued by Foreign Courts as follows:—"Where a foreign court has granted a Decree in matrimonial proceedings wh.ether 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 had been ordinarily resident in Kenya for at least two years immediately preceding the date of institution of proceedings.
(b) Being a Divorce of annulment, divorce or separation, it is effective in the country of domicile of the parties or either of them."
10. The Applicant and the Respondent after solemnization of their marriage lived Kenya briefly then moved to Netherlands. The Applicant and Respondent were both domiciled in the Netherlands. I have no reason to doubt that the Court that issued the decree had the requisite jurisdiction to do so. I have read the judgment. In my view the decree of divorce is effective under the laws of District Court of Alkmaar. I therefore find and hold that the decree of divorce provided by the Applicant is capable of being recognized in Kenya.
9. Under the Kenya 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 foreign judgments is not the same as Registration. Whilst the provisions of the Foreign Judgments (reciprocal enforcement) Act only regulates 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."



Relying on the above provisions of law, the applicant seeks to have the foreign decree of the divorce recognized by this court. I see no reason to decline to do so. In the result:

1. I recognize and adopt the decree of divorce from the District Court of Alkmaar issued on 21st July, 2022
2. I order the Applicant to register the said decree of divorce with the Registrar of Marriages pursuant to section 61 of the [Marriage Act, 2014](#); and
3. Each party shall bear own costs.

Orders accordingly.

DATED AT NAIROBI THIS 28TH DAY OF FEBRUARY 2024.

S. N. RIECHI

JUDGE

