



**AKO v MMO (Miscellaneous Cause E004 of 2024)
[2024] KEHC 9607 (KLR) (25 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 9607 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYAMIRA
MISCELLANEOUS CAUSE E004 OF 2024**

**WA OKWANY, J
JULY 25, 2024**

BETWEEN

AKO APPLICANT

AND

MMO RESPONDENT

RULING

1. The Applicant filed the Application dated 29th April 2024 seeking the following orders: -
 1. Spent
 2. That the Honourable Court be pleased to recognize and adopt the dissolution of marriage decree given to the Applicant and the Respondent in the Republic of Germany in the District Court of Nuremberg before single Judge Stoiber on the 20th August 2021.
 3. Any other further orders subject to any conditions as the Court may deem fit.
2. The Application is brought under Section 67 of the *Marriage Act* 2014 and is supported by the Applicant's Affidavit.
3. The Respondent did not participate in these proceedings.
4. The Application was canvassed through written submissions.
5. The Applicant's case was that she got married to the Respondent in Nairobi Kenya on 16th March 2014 before she moved to Germany in August 2014 to join the Respondent and that they were blessed with one issue on 15th January 2016.
6. She further stated that they later separated on 1st September 2018 and divorced on 20th August 2021. They obtained a divorce from the Republic of Germany in the District Court of Nuremberg on 20th



August 2021. She averred that she has been given the sole legal and actual custody of their child and she intends to obtain a certificate of no impediment to contract a new marriage.

7. I note that Section 67 of the Marriage Act 2014 provides for the recognition of Divorce Decrees issued by Foreign Courts as follows:-

“67. 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 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.”

8. It is noteworthy that in such proceedings, it is not mandatory that there be reciprocity in the recognition and registration of foreign judgments as envisaged under the Foreign Judgments (Reciprocal Enforcement Act) 1984. The essence of Section 67 is that Kenyan courts can recognize and adopt all foreign judgments relating to matrimonial proceedings without considering the aspect of reciprocity as long as a party seeking the order demonstrates, through evidence, that either themselves or the other party was domiciled in the country from where the decree emanated. They must also demonstrate that the court which issued the decree had jurisdiction and that the decree dissolving the marriage was effective in that country of domicile.

9. A perusal of the court record reveals the Decree (Copy marked AKO-1) that effected the divorce between the parties was issued in Germany. This court has no reason conclude that the court in Germany did not have the requisite jurisdiction to issue the decree. It is also clear that the parties lived together in Germany for two years after solemnizing their wedding in Kenya. They were therefore domiciled in the jurisdiction where the decree in question was obtained.

10. I therefore find that the Decree issued in Germany dissolving the marriage between the parties is recognizable by the Kenya Courts.

11. I also note that recognition of foreign judgments is not synonymous to registration because the provisions of Sovereign Judgments (Reciprocal Enforcement) Act only regulates registration of foreign judgments. Judgments emanating from matrimonial cause are registrable not for enforcement purposes, since matrimonial causes are declaratory in nature, but for dissolution of the marriage which is considered a personal right. The above position notwithstanding, foreign annulment and dissolution of marriage are now registrable under Section 61 of the Marriage Act 2014 and such registration is a preserve of the registrar of marriages and not the courts. The said section states thus: -

(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.

12. In M.N.M vs. PNM (2016) eKLR Musyoka J. recognized a foreign judgment entered in the United States of America and held thus: -

“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 envisages adoption of such orders by the courts, the registration



envisioned in Section 61 of the Marriage Act 2014 is by the Registrar of Marriages.....it was suggested that foreign judgments in matrimonial cause are not recognized in Kenya. That cannot be the correct position.”

13. It is my finding therefore that under the *Marriage Act* 2014 Foreign Judgments relating to matrimonial proceedings particularly in which marriages are annulled are recognized in Kenya. I therefore find that the instant Application is merited and I allow it as prayed.
14. Disposition:
 - i. The Decree of dissolution of marriage issued on 20th August 2021 to the Applicant and the Respondent at the District Court of Nuremberg in File Reference No. 114 F 2591/19 in the Republic of Germany be and is hereby adopted by the High Court in Kenya.
 - ii. I make no orders on costs.
15. It is so ordered.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT NYAMIRA VIA MICROSOFT TEAMS THIS 25TH DAY OF JULY 2024.

W. A. OKWANY

JUDGE

