



**JWGK v AKK (Divorce Cause E988 of 2021)  
[2023] KEMC 99 (KLR) (21 February 2023) (Judgment)**

Neutral citation: [2023] KEMC 99 (KLR)

**REPUBLIC OF KENYA  
IN THE MILIMANI COMMERCIAL CHIEF MAGISTRATE'S COURTS  
DIVORCE CAUSE E988 OF 2021  
JP ADUKE, SRM  
FEBRUARY 21, 2023**

**BETWEEN**

**JWGK ..... PETITIONER**

**AND**

**AKK ..... RESPONDENT**

**JUDGMENT**

1. The Petitioner filed the petition dated 20<sup>th</sup> Sept 2021 seeking a divorce on the grounds of irretrievable breakdown of the marriage and cruelty. Return of service on record shows that the respondent was served with the petition and annexures thereto. The respondent neither entered appearance nor filed a response. The petitioner filed an application seeking to have the DC proceed undefended. Return of service on record shows the petitioner served the respondent with the said application. These proceedings proceeded undefended.
2. The brief facts of the case are as contained in para 1-7 of the petition on record. In summary, JWGK and AKK solemnized their marriage at the Attorney General's Chambers in Kenya. I note with concern that the Petitioner has uploaded onto the Judiciary E-filing/CTS Portal a marriage certificate bearing the names of the bridegroom as GG and Bride as JWN. It is not clear from the pleadings before me whether these particulars refer to the Petitioner and Respondent before me in this matter. I have also not seen any deed polls on file as at the date of writing this judgment. They have five issues together from the union, all adults as at the date of conclusion of the hearing. Both of them are domiciled in Kenya. The parties have no intentions of salvaging this marriage. The particulars of the grounds for divorce are outlined in the petition as follows:
  - (1) Irretrievable breakdown of the marriage;
  - (2) Cruelty;



3. At the hearing thereof, the petitioner relied on her petition and verifying affidavit 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. She prayed for an order of dissolution of the marriage.
4. The issues for determination before this court are:
  - (1) Whether or not there is evidence of a civil marriage before this court;
  - (2) Depending on the outcome in 1 above, whether or not an order of divorce can issue.
5. The applicable law is ss. 3, 44,55 and 59 of the Act.
6. In particular, s. 59 of the Act provides as follows:
  59.
    - (1) A marriage may be proven in Kenya by—
      - (a) a certificate of marriage issued under this Act or any other written law;
      - (b) a certified copy of a certificate of marriage issued under this Act or any other written law;
      - (c) an entry in a register of marriages maintained under this Act or any other written law;
      - (d) a certified copy of an entry in a register of marriages, maintained under this Act or any other written law; or
      - (e) an entry in a register of marriages maintained by the proper authority of the Khoja Shia, Ith'nasheri, Shia imam, Ismaili or Bohra' communities, or a certified copy of such an entry.
    - (2) Despite subsection (1), a marriage may be proven in Kenya if it was celebrated in a public place of worship but its registration was not required, by an entry in any register maintained at that public place of worship or a certified copy of such an entry.
7. I note with concern that the Petitioner has uploaded onto the Judiciary E-filing/CTS Portal a marriage certificate bearing the names of the bridegroom as GG and Bride as JWN. It is not clear from the pleadings before me whether these particulars refer to the Petitioner and Respondent before me in this matter. I have also not seen any deed polls on file as at the date of writing this judgment.
8. In view of the above reasons, I am persuaded that there is no evidence of a registered customary union on file. Having found as above, I find no reason to proceed to analyse the second issue. This petition is struck out on the following terms:
  - (1) Petition dated 20<sup>th</sup> Sept 2021 is struck out.
  - (2) No orders on costs;
  - (3) Either party is at liberty to apply for registration as under section 3, 44 and 55 of the *Marriage Act*;
  - (4) Either party is at liberty to file a fresh petition for consideration before the court noting to annex a copy of the correct marriage certificate in respect of the parties.
  - (5) These are the orders of this court.



**ADUKE JEAL PRAXADES ATIENO**

**SENIOR RESIDENT MAGISTRATE**

**JUDGEMENT DATED AND SIGNED THIS 21<sup>ST</sup> FEB 2023.**

