



**MHD v HAA (Divorce Cause E037 of 2024)
[2025] KEKC 26 (KLR) (28 February 2025) (Judgment)**

Neutral citation: [2025] KEKC 26 (KLR)

**REPUBLIC OF KENYA
IN THE KADHIS COURT AT MOYALE
DIVORCE CAUSE E037 OF 2024
A GALGALO, PK
FEBRUARY 28, 2025**

BETWEEN

MHD PETITIONER

AND

HAA RESPONDENT

JUDGMENT

1. The petitioner filed the petition dated 3rd July 2024, she sought for dissolution of marriage between her and the respondent, payment of debt Kshs 163,770, bar the respondent from selling his land to remain for children of their marriage, custody of the children of the marriage, provision of full maintenance including school and madrasa fees, rent and food, giving all household items, and cost of the suit.
2. She premised her petition on the grounds that the respondent is a drug addict, becomes violent whenever he drinks, assaulted her and caused injury to her in front of the children, and had threatened to kill, refused to provide for the children. She said he had chased her away from the matrimonial home. She avers that he might end up selling the only plot he owns she requests the court to give an order barring him selling that land in his name as that is the only asset remain for the children. She states elders and families have tried their best to prevent the respondent from causing the problems towards his children and wife, but he had refused that now the elders and close relatives have agreed to end this marriage.
3. The respondent was served with the petition, verifying affidavit sworn by the petitioner, list of witnesses and their statements, list of documents (including school fee's structure, foodstuff, police OB), and summons from this court. But he appeared for his case on 26th September 2024 at 10.00 o'clock after which the time frame of fifteen days given by the court on the summons within which the respondent must appear and file the defense had elapse. Thereof, in the court he signed at the back of the summons acknowledging the service.



4. He confirmed to the court that he did not file the defense of the allegations against him, he gave excuses not satisfied by the court, however the court set a side application by the petitioner seeking for default judgment against the respondent for failure to enter defense and granted to him another chance to file the defense out of time within ten days, but he did not make it again, until on 29th October 2025, the petitioner proceeded with application to enter default judgment, and the formal proof with the leave of the court.
5. She presented her testimonies and that of the witness, giving evidence that the respondent is a drunkard, causing violence to his family, threatening to kill, and lack of provision. They all resorted to separation between the petitioner and the respondent by dissolution of their marriage.
6. Along the way after the court had taken most of the petitioner's evidence, and that of her witnesses, the respondent brought a handwritten defense without payment of court's fees so as to make it part of the record. It was received on 29th November 2024, in which he admitted the problem which he forced the petitioner out of the home, giving a reason that she denied him bed. He also admits debt of Kshs 168,570 which he pledged will pay it in installment. He further admitted drinking alcohol and promised to forget it. But he denied other allegations over being violent and threatened to kill his family. He promised to add another Kshs 10,000 on top of what is already been deducted from his salary.
7. Islam prohibits drinking alcohol, the Quran calls, intoxicants "the work of Satan" and tell the believers to avoid them (al-Maidah: 90). The Prophet PBUH said, "any drinks that intoxicates is unlawful" In Sahih al-Bukhari (2295) and Sahih Muslim (86), Abu Hurayrah (may Allah be pleased with him) said: the Prophet (peace and blessings of Allah be upon him) said: "No one who commits zina is a believer at the moment when he is committing zina, and no one who drinks wine is a believer at the moment when he is drinking it, and no thief is a believer at the moment when he is stealing, and no robber is a believer at the moment when he is robbing and the people are looking on." This means that such a person is not a believer in the sense of having complete faith, rather his faith is greatly lacking because of this evil action.
8. One of the greatest rights enjoined by wives in children is that the head of the family should spend on them; indeed, this is one of the greatest acts of worship and devotion to Allaah that a person can do. Spending on them covers their food, drink, clothing and shelter, and everything that a wife and children need to ensure their good health and physical well-being.
9. Allaah has told us that men are the ones who spend on women, and so they have the status of being qawwaamoon (maintainers and protectors) and of excelling over them, because they spend on them when they give them the mahr (dowry) and maintenance.
10. Allaah says (interpretation of the meaning):

"Men are the protectors and maintainers of women, because Allaah has made one of them to excel the other, and because they spend (to support them) from their means..." [al-Nisa' 4:34]. The evidence of the Qur'aan includes the verses of Quran (interpretation of the meanings): "Let the rich man spend according to his means, and the man whose resources are restricted, let him spend according to what Allaah has given him. Allaah puts no burden on any person beyond what He has given him. Allaah will grant after hardship, ease." [al-Talaaq 65:7]

"... but the father of the child shall bear the cost of the mother's food and clothing on a reasonable basis. No person shall have a burden laid on him greater than he can bear..." [al-Baqarah 2:233]



“... and if they are pregnant, spend on them until they deliver...” [al-Talaaq 65:6]

11. With regard to the evidence in the Sunnah, many prophetic narrations were reported which show that it is obligatory for the husband to spend on his wife and children, and those who are under his guardianship. Jaabir ibn ‘Abd-Allaah (may Allaah be pleased with them both) reported that the Prophet (peace and blessings of Allaah be upon him) said in his sermon during his Farewell Pilgrimage:

“Fear Allaah with regard to women, for they are your prisoners. You have taken them as a trust from Allaah, and they are permissible for you through the word of Allaah, and they have the right to be given provision and clothing by you on a reasonable basis.” (Reported by Muslim, 8/183).

12. ‘Umar ibn al-Ahwas (may Allaah be pleased with him) reported that he heard the Messenger of Allaah (peace and blessings of Allaah be upon him) say during his Farewell Pilgrimage:

“Verily, you have rights over your women, and your women have rights over you. As for your rights over your women, they are that they should not allow anyone to sit on your beds whom you dislike or allow anyone into your houses whom you dislike. Verily, their rights over you are that you should treat them well with regard to their clothing and food.” (Reported by al-Tirmidhi, 1163, and Ibn Maajah, 1851).

13. Mu’awiyah ibn Haydah (may Allaah be pleased with him) said: “I said, ‘O Messenger of Allaah, what are the rights of the wife of any one of us over us?’ He said, ‘That you feed her when you feed yourself and clothe her when you clothe yourself, that you do not say to her, “May Allaah make your face ugly!”, and that you do not hit her.” (Reported by Abu Dawood, 2/244; Ibn Maajah, 1850; Ahmad, 4/446).

14. Imaam al-Baghawi said: “Al-Khattaabi said: this is a command to spend on women and clothe them, according to the capabilities of the husband. As the Prophet (peace and blessings of Allaah be upon him) made this a right of women, it is necessary whether the husband is present or absent. If the husband is not able to do it, it become a debt which he owes, as with all other duties, whether or not the Qadi (judge) issues a decree to that effect.”

15. It was reported that Wahb said: “A freed slave of ‘Abd-Allaah ibn ‘Amr said to him, ‘I want to go and spend this month there in Jerusalem.’ He said, ‘Have you left enough for your family to live on during this month?’ He said, ‘No.’ He said, ‘Then go back to your family and leave them what they need, for I heard the Messenger of Allaah (peace and blessings of Allaah be upon him) saying: “It is enough sin for a man not to give food to the one whom he is supposed to feed.” (Reported by Ahmad, 2/160; Abu Dawood, 1692).

16. The original report in is Muslim, where the wording is, “It is enough sin for a man to withhold food from the one whom he is supposed to feed.” Anas (may Allaah be pleased with him) reported that the Prophet (peace and blessings of Allaah be upon him) said: “Allaah will ask everyone who has been given responsibility about whatever he was responsible for, until He asks a man about his family.” (Reported by Ibn Hibbaan).

17. Abu Hurayrah (may Allaah be pleased with him) said:

“I heard the Messenger of Allaah (peace and blessings of Allaah be upon him) saying, ‘By Allaah, if one of you were to get up in the morning and carry firewood on his back, and sell it and meet his own needs from the money and give some away in charity, this would be better for him than coming to a man and begging from him, and either being given something or not. The upper hand (the one which gives) is better than the lower hand (the one that



takes) and start with those for whom you are responsible.” (Reported by Muslim, 3/96). According to a report narrated by Ahmad (2/524). It was said: “For whom am I responsible, O Messenger of Allaah?” He said, “Your wife is one of those for whom you are responsible.”

18. According to a hadeeth narrated by Jaabir ibn Samurah (may Allaah be pleased with him), the Prophet (peace and blessings of Allaah be upon him) said: “If Allaah gives something good to any one of you, let him start with himself and his family.” (Reported by Muslim, 1454).

19. With regard to the consensus of the scholars:

Imaam Ibn Qudamah (may Allaah have mercy on him) said in al-Mughni (7/564): “The scholars have agreed that it is the duty of husbands to spend on their wives if they (the husbands) have reached the age of puberty, except in the case of a wife who is rebellious. This was mentioned by Ibn al-Mundhir and others.”

20. The above references to the texts of Islam indicate that it is obligatory for a man to spend on his family and to take care of their interests. Many hadeeth narrated from the Prophet (peace and blessings of Allaah be upon him) demonstrate the virtue of this action and show that it is a righteous action in the sight of Allaah. Abu Mas’ood al-Ansaari (may Allaah be pleased with him) reported that the Prophet (peace and blessings of Allaah be upon him) said:

“When the Muslim spends on his family with the hope of earning reward, this is an act of charity for him.” (Reported by al-Bukhaari, 1/136).

21. Al-Haafiz ibn Hajar (may Allaah have mercy on him) said in al-Fath (9/498):

“Spending on one’s family is obligatory according to scholarly consensus. Islam called it sadaqah (charity) lest people think that they are doing it as a duty for which there is no reward, because they knew how much reward there is in giving charity, so that they will not give charity to others until they have given enough to their families. This was to encourage them to give priority to the charity that is obligatory before they give voluntary charity.”

22. Sa’d ibn Maalik (may Allaah be pleased with him) reported that the Prophet (peace and blessings of Allaah be upon him) said to him:

“Whatever you spend on your family, you will be rewarded for it, even the mouthful which you lift up and place in your wife’s mouth.” (Reported by al-Bukhaari, 3/164, and Muslim, 1628).

23. Abu Hurayrah (may Allaah be pleased with him) reported that the Prophet (peace and blessings of Allaah be upon him) said:

“A dinar that you spend in the way of Allaah, a dinar that you spend to free a slave, a dinar that you give to the poor, and a dinar that you spend on your family – the greatest of these is the one that you spend on your family.” (reported by Muslim, 2/692).

24. Ka’b ibn ‘Ujarah (may Allaah be pleased with him) said:

“A man passed by the Prophet (peace and blessings of Allaah be upon him), and his Companions were impressed by the man’s strength and energy. They said, ‘O Messenger of Allaah, if only this was for the sake of Allaah!’ The Messenger of Allaah (peace and blessings of Allaah be upon him) said: ‘If he goes out to work for the sake of his young children, he is striving for the sake of Allaah; if he goes out to work for the sake of his aged parents, he



is striving for the sake of Allaah; if he goes out to work to keep himself from having to beg, he is striving for the sake of Allaah; but if he goes out to work for the purposes of showing off and boasting, then he is striving in the way of the Shaytaan.” (Reported by al-Tabaraani, Saheeh al-Jaami’, 2/8).

25. The Salaf, may Allaah have mercy on them, understood this duty properly. It was their guideline in their day-to-day life with their families. No one put it better than Imaam al-Rabaani ‘Abd-Allaah ibn al-Mubaarak (may Allaah have mercy on him), who said: “There is nothing better than earning one’s own living, not even jihaad for the sake of Allaah.” (al-Siyar, 8/399)
26. Over the issue of children’s custody, it is not in the best interest of minor children to be placed in the custody of someone who is a drunkard. He is not suited to be up the children as long as he drinks alcohol, as he will ruin and destroy them. In this situation, the petitioner has the right of children’s custody than the respondent. He will only be allowed to have access if he is in a sober mind not in a state of drunkard.
27. About the issue of plot own by the respondent as the only matrimonial asset, the petitioner is expressing her fear that the respondent might sell the property if in case there is dissolution of their marriage by the court. She wants the plot to be reserved for their children. She has not presented the number of the plot or document in that regard. But the respondent himself is in agreement that the plot should not be sold. Therefore, as a matter of putting extra emphasis on the subject the court also bars any sale of the said plot by either the respondent or the petitioner.
28. I have considered the petitioner’s case and the respondent as well and found that the petitioner’s case is brought on merit. I found that the respondent is addicted to alcohol, causing violence and threatened the life of the petitioner and her children.
29. It is hereby ordered that:
 - a. Because of these problems the petitioner should not be harmed, she is granted dissolution of the marriage, and custody of the children.
 - b. The petitioner shall observe eddat period of 100 days in which she will not marry another man unless at the end of May 2025.
 - c. The respondent will have access to the children except at the time he is drunkard.
 - d. He will be going to provide maintenance including food, shelter and other needs as per his financial ability on top of the money deducted from his salary.
 - e. He should pay debt of Kshs 168,570 after he is relieved of loan, which then will be deducted from his salary in installment.
 - f. The respondent and the petitioner are barred from selling the plot they own as matrimonial property.
 - g. The Land Administrator Moyale Sub County is instructed not to approve or facilitate any transaction in regard to selling of said plot in the name of the respondent (HAA).

JUDGMENT DELIVERED VIRTUALLY ON THIS 28TH DAY FEBRUARY OF 2025.

Hon Adan Galgalo

Principal Kadhi

MOYALE KADHI’S COURT



In the presence of Mr. Jattani Waqo – the court assistant

Note: Parties are served with a copy of this judgment.

