



**QSG v MOG (Matrimonial Cause E024 of 2024)
[2025] KEKC 25 (KLR) (19 February 2025) (Judgment)**

Neutral citation: [2025] KEKC 25 (KLR)

**REPUBLIC OF KENYA
IN THE KADHIS COURT AT MOYALE
MATRIMONIAL CAUSE E024 OF 2024
A GALGALO, PK
FEBRUARY 19, 2025**

BETWEEN

QSG PLAINTIFF

AND

MOG DEFENDANT

JUDGMENT

1. The Applicant filed a Notice of Motion dated 23rd January 2025 seeking default judgment against the respondent who is defendant in the matrimonial cause E024 of 2024 in which she sought for custody of two minors under her care and protection, payment of dowry of 3 cows, maintenance at Kshs 30,000 p.m., shelter at Kshs 20,000 p.m., schools fees kshs 24,000 p.m., all to and maintenance debt at Kshs 25,000, cost of the matrimonial suit and for this application, and any further relief may lawfully be granted by the court.
2. She premised her application that the respondent has been duly served with the plaint and the summons by the court process served from this court on 18th November 2024, but the respondent has neither entered appearance nor filed his defense as he was required by law showing lack of interest and commitment to the case before the court.
3. She avers suffering inconveniences due to defendant’s action deserting matrimonial duties and failed to provide maintenance for the children of their marriage since January 2024. They were married under Islamic shariah at a dowry of 3 cows which were not yet paid and were blessed with two children. She said the respondent / defendant before he deserted, used to provide maintenance at rate of Kshs 20,000 p.m. and the school fees were in boarding school at cost of Kshs 24,000 p.m., they dropped out of that boarding school because of lack of payment of school fees. She said that she could not step in to save the situation by paying for them as she has no income, unlike the defendant who is employed by the [Particulars Withheld] Company, and she said he is paid the best salary. She states that the respondent had moved out and abandon his legally married family to another woman not married to him, the



woman who sells a bar which he opened for her causing his children suffering. She said the woman always insult her via social media particularly the Tik Tok.

4. She avers that since she could not sustain provision for the minor children, she moved to Moyale and stayed with her parents for support. She said she had involved the defendant's family and his mother in this issue but there was no solution to the problem hence she moved to this court seeking her rights and those of her children.
5. Issues of determination are whether the defendant should pay the dowry of 3 cows entered for this marriage. Whether the plaintiff is granted custody of the children and maintenance for them. Whether the defendant will pay the debt incurred by the plaintiff in feeding the children of the marriage.
6. From the records of this court, which I have perused and found that the respondent has not entered appearance and not filed defense against the allegations contained in the plaint filed by the plaintiff. But the plaintiff has filed evidence showing that the defendant was duly served with the plaint and summons from this court by the court process server duly authorized by this court. Thus, it is clear evidence that the defendant has been duly served, and he did not appear to defend the case, showing his choice not interested and committed in defending the claims against him. Where the court proceeded to hear the plaintiff and her witnesses for formal proof of the plaintiff's claims. This is demonstrated from the teaching of Quran 38:24, in its meaning of the verse, where the prophet David (peace be upon him) gave his decision after hearing what only one party had to say. The fact of the matter is that when the respondent kept quiet at the complaint of the complainant and said nothing in defense it by itself amounted to confession by him. That is why the Prophet David (peace be upon him) came to the conclusion that the facts of the case were the same as the complainant had stated.
7. Article 55 of the *Law of Procedure Before Shariah Courts*, Saudi Arabia (English version of Royal Decree No. M/21, 19th August 2000), which states, "If the defendant is absent from the first hearing, consideration of the case shall be postponed to a subsequent hearing of which the defendant shall be notified. If he is absent from this hearing or from another hearing without an excuse acceptable to the court, the court shall adjudge the case and its judgment shall be considered a default [judgment] with respect to the defendant, unless defendant's absence was after the closing of argument, in which case the judgment shall be considered in his presence".
8. Article 50(1) of the *Constitution* of Kenya states that every person has the right to a fair hearing. This includes the right to have disputes resolved in a public hearing before a court or other independent and impartial tribunal. Here in this case the respondent has been notified of allegations against him despite him choosing not to appear and defending the claims against him, he has been accorded the chance of fair hearing. The petitioner should not suffer at the expense of the respondent who failed to appear and to defend himself without any reason communicated to the court.
9. During the formal proof the petitioner presented evidence that the respondent did not pay her dowry of three cows which were not yet received. She requests payment of the dowry in form of money at market price. She submits that a cow is above kshs 40,000 in the current market.
10. In Islamic law, the husband is required to pay dowry or mahr to the wife during the marriage ceremony or at the time of conducting nikah (the marriage contract). The dowry or mahr is a sum of money or anything which has monetary value, which becomes the wife's property in exclusion of the husband's property. The dowry must be agreed upon at the marriage contract and may be paid instantly or may be deferred to a later date. Here in this case the agreed dowry was three cows which were deferred and no time limit fixed for payment. For this one, it can be paid anytime may be demanded by the wife because it is her legal property on the part of the husband. He must settle the deferred mahr to the plaintiff.



11. The Quran is specified on this issue; Allah Says (what means): “Men are in charge of women by [right of] what [qualities] Allah has given one over the other and what they spend [in support] from their wealth. So righteous women are devoutly obedient, guarding in [the husband's] absence what Allah would have them guard...” [Quran 4:34] “And give the women [upon marriage] their [bridal] gifts graciously. But if they give up willingly to you anything of it, then take it in satisfaction and ease.” [Quran 4:4] Al-Qurtubi quoted in his Tafseer (interpretation of the Quran) from Qataadah that he said: “Graciously means an obligatory obligation.”
12. During the time of the Prophet PBUH and his companions, Mahr was paid instantly as the accepted practice and the amount fixed was generally quite minimal. The giving of Mahr by AR to FR is an illustration of how this custom was respected. After the marriage had been arranged, the Prophet PBUH asked AR if he had anything he could give as dower in order to make FR his lawful wedded wife, where AR gave his coat of Armour given to him once ago by the Prophet PBUH to FR.
13. The dowry may also be deferred to a later date, which becomes a debt to the husband and if the husband dies it is paid from his property or paid by his beneficiaries. Wherefore, the plaintiff is entitled to the deferred dowry agreed upon during their dowry amount of three cows or equivalent amount as per market price of three cows Kshs 120,000.
14. The respondent before he deserted her with the children in Nairobi, he was providing maintenance at Kshs 20,000 p.m. which to her evidence was insufficient, paying school fees at Kshs 24,000 p.m. She adduced that she had a debt incurred in feeding the children accumulated at Kshs 25,000. She requests for provision of maintenance Kshs 30,000 p.m. for food and shelter due to children’s demand is increasing and high cost of living and payment for education of the children both secular and Islamic including school uniforms at Kshs 25,000 per term.
15. In Islam, the husband is responsible for feeding the wife and the children according to his means and that the wife is not required to provide for herself or her children unless she willingly chooses to do so. The wife’s earnings are her personal property, and it is incumbent on the husband to maintain his wife and children. Here also the plaintiff incurred debt from someone due to feeding the children, she has the right to seek repayment from the defendant, because it is his responsibility to feed her and the children. It is not stated that the defendant is unable to feed the family, but he deserted them without provision of maintenance, she must save the children by incurring the debt with the intention to seek refund or payment from the defendant.
16. According to Islam, custody of minors is usually given to the mother after separation based on the best interest of the child, until the child reaches seven years or remarries. Moving the child from their mother upon reaching seven years or when the mother remarried is not automatic, still the best interest of the child must be considered. However, there are circumstances may be the custody may be given to the father. In this case the children are living with the mother after even desertion by the respondent. Hence, she remains to be having the custody, but the defendant should be given access on reasonable terms.
17. Lastly, I have considered the evidence adduced by the petitioner, and issue orders as follows;
 1. That the plaintiff is granted custody of the two children of the marriage, but the respondent will have access reasonably.
 2. That the respondent shall pay dowry of 3 cows or equivalent to Kshs 120,000 to the plaintiff.
 3. That the respondent should provide maintenance of the children including food, shelter, school and madrasa fees, clothes and needs at rate of Kshs 50,000 p.m.



4. That the defendant should pay debt incurred by the plaintiff in feeding the children Kshs 25,000.
5. That the defendant should be notified of this decision entered into by this court.

JUDGEMENT DELIVERED, DATED AND SIGNED AT MOYALE THIS 19TH DAY OF FEBRUARY 2025.

ADAN GALGALO

PRINCIPAL KADHI

In the presence of:

Mrs QSG – the Plaintiff

Mr. Jattani Waqo – the Court Assistant.

