



HAA v AAA (Divorce Cause E003 of 2024) [2025] KEKC 20 (KLR) (28 May 2025) (Judgment)

Neutral citation: [2025] KEKC 20 (KLR)

**REPUBLIC OF KENYA
IN THE KADHIS COURT AT NAKURU
DIVORCE CAUSE E003 OF 2024
IN NYABOGA, SRK
MAY 28, 2025**

BETWEEN

HAA PETITIONER

AND

AAA RESPONDENT

JUDGMENT

1. The petitioner and the respondent celebrated their marriage in accordance to Islamic law in Elmentaita, Nakuru County in 2018. They cohabited has wife and husband in Ken-land and as a result were blessed with one issue, a baby boy named NAA born on 12th April 2019.
2. The marriage between the petitioner and the respondent as alleged, went through challenges which led the petitioner to approach this Honorable Court via her petition dated 29th May 2024 and sought against the respondent for inter alia, orders:
 - a. That the marriage be dissolved.
 - b. Any other relief the Honorable Court may deem fit and just.
3. The matter for several times appeared before the late Honorable Principal Kadhi, T. Konyuk, May Allah forgive him, have mercy on him and grant him paradise, who had referred the it for Alternative Justice System (A.J.S.) but it seems that did not workout.
4. The matter came up for hearing on 5th March 2025 in which both parties appeared virtually and thus proceeded inter partes.
5. The petitioner, an accountant with xxxxx Agency testified on oath that she celebrated her marriage to the respondent in xxxxx , within Nakuru County on around July 2018. She stated that the marriage was conducted in according to Islamic Customs. She further stated that after celebrating the marriage, she together with the respondent cohabited in xxxx , Nakuru County and as a result were blessed with one issue.



6. The petitioner stated that after delivery, the respondent who had gone out of the country on official duties was not providing what is sufficient to her together with the issue of marriage. She stated that she raised her concern on the insufficient provision but nothing happened.
7. The petitioner alleges that when the respondent came back from the official duties out of the country, he denied her conjugal rights on grounds that he was sick and tired. She went on to state that once when the respondent went back to his duties, she called him and told him that she cannot bear with the kind of life they were living and asked him that she wants to go to her parents which he accepted.
8. The petitioner further stated that she took her belongings and went and after one week, a neighbor called her to inform her that all the house holds had been taken away by the respondent who never even informed her. She went on to testify that after sometime, a lady texted her via whats-app referring her to as a co-wife and in her profile picture, she was sitting on her matrimonial bed which had been taken away by the respondent. She went on to state that the lady asked her if she was divorced from the respondent in which the petitioner said she answered in the affirmative.
9. The petitioner stated that after that incident, she made the decision not to continue with the marriage and it is almost five years since then and cannot go back and instead wants to be granted her divorce.
10. In response, the respondent, a medic with the xxxxxxxx currently working at xxxxxx concurred with the petitioner on the year that they celebrated their marriage but differed with her on the month. He testifies that it was in December 2018 and he spent one week with her and left for his place of work in Elwak, Mandera County. He stated that while in Elwak, they were deployed to Somalia where they spent six months until July 2019 when he came back to Nakuru and found the petitioner had given birth.
11. The respondent stated that while in Nakuru then, he spent one week with the petitioner and returned to Somalia whereby he came back to the petitioner on March 2020. He stated that as it was during the Covid period, they were not allowed to apply for leave so he rarely visited the petitioner.
12. In response to the petitioner's claim that he had denied her conjugal rights, the respondent stated that last time when he visited the petitioner, he found her residing with her aunt who also had a child and as it was a one bedroom house, he returned to work and after several days, the petitioner was calling him and insisting that she wants to be divorced.
13. After the hearing, the Honorable Court further referred the matter to the Court Annexed Mediation (C.A.M.) but when it came back, still no settlement had been reached.

Analysis And Determination:

14. The dispute between the parties is on divorce. The petitioner from her petition and during the hearing has insisted that she be granted divorce which the respondent is not prepared for. The respondent believes that he has not wronged the petitioner and as a result, there is no ground for divorce in this petition.
15. It seems that the petitioner was not okay with the respondent's state of being away from her and for long periods most of the time. I also find that since they married, the respondent and the petitioner rarely spent enough time together. I furthermore find that the petitioner did find out that the respondent was in another marital relationship and which made her opt for divorce.
16. I find that the petitioner before leaving her matrimonial home had informed the petitioner that she was going to her parent in which he accepted. When he found that certain belongings of the petitioner



were missing from the house is when he learnt that the petitioner was serious and he requested her to come back but she declined.

17. I further find that the parties for several times had tried to engage elders to resolve their differences but that did not succeed as it seems that the petitioner was determined to end the marriage.
18. That said, the petitioner's act of leaving her matrimonial home is against the principles of Islamic law. It is an act which is prohibited and may only be allowed when there is a necessity which was not there in this instance. The Qur'an states:

“Do not force them (wives) out of their homes, nor should they (wives) leave.” 65:1

19. If maybe the petitioner had settled in her matrimonial home instead of leaving, it would have been more convenient for them to settle their differences in which even divorce can be granted while she is there.
20. It is not clear whether the parties had made an agreement that the respondent should not have another wife apart from the petitioner. If they had made the same and the respondent breached the agreement, then the petitioner may have a right to seek the termination of the marriage.
21. Having said that, since celebrating the marriage, the respondent has not been making enough effort to spend time with his family for reasons that the circumstances of his job has made it impossible and this furthermore led to denying her conjugal right. It is his duty to balance between performing official duties and at the same time reserving some time for the family as the family is the foundation of society and which is the one that provides emotional, social, economic and health support to members of societies throughout their lives. The Qur'an states:

“And among His signs is that He created for you spouses that you may find tranquillity in them; and He placed between you affection and mercy.” 30:21

22. It is almost five years now that the petitioner and respondent are not together. Efforts have been made and some even through this Honorable Court to allow parties settle their issues but to no avail. Marriage as a social contract requires the consent of both the husband and wife and no one, even a court of law can coerce one into undesirable relationship.
23. Imam al Bukhary relates from Ibn Abbas saying that:

“Barirah's husband was a slave called Mughith. I saw him moving behind her, weeping, and his tears streaming down his beard. The Prophet, may God bless him and grant him peace, said to Abbas: ‘O Abbas, are you amazed at Mughith's love for Barirah and Barirah's hatred of Mughith?’ The Prophet, may God bless him and grant him peace, said to Barirah: ‘Why don't get back to him (Mughith) ?’ She asked: ‘O Messenger of God, are you commanding me?’ He said, ‘I am only interceding.’ She said: ‘I have no need of him.’ ” No. 5283.

24. From the aforementioned, the petitioner be and is hereby divorced from the respondent. Furthermore, this being a judicial divorce, it is an irrevocable divorce.

Orders accordingly.

DATED, SIGNED AND DELIVERED IN NAKURU THIS 28TH MAY 2025.

IDRIS N. NYABOGA

SENIOR RESIDENT KADHI

In the presence of:



Court assistant

Petitioner

Respondent

