



HIK v MAH (Divorce Cause E035 of 2023) [2024] KEKC 1 (KLR) (16 January 2024) (Judgment)

Neutral citation: [2024] KEKC 1 (KLR)

**REPUBLIC OF KENYA
IN THE KADHIS COURT AT MOYALE
DIVORCE CAUSE E035 OF 2023
G ADAN, PK
JANUARY 16, 2024**

BETWEEN

HIK PETITIONER

AND

MAH RESPONDENT

JUDGMENT

1. The petitioner filed this petition on 15th August 2023, seeking for dissolution of marriage, custody of the children, future maintenance, past maintenance at Kshs 5000 per month for 48 months sum up to Kshs 240,000, house rent areas of Kshs 25000, Dowry of Kshs 15000, and School fees Kshs 7000 per term for children.
2. She based her prayers on none provision of maintenance, lack of respect for the petitioner’s family, desertion since pregnancy of her last born resulted to lack of conjugal rights, threats of kill from the respondent’s wife, and finally faces a lot stress causing her trauma and stigmatized.
3. The respondent denied allegation against him relating to none provision of maintenance. He denied having information and not aware the petitioner’s shift to Turbi. He said it was not with his permission, and they never discussed such idea. She migrated while he was away from home.
4. The respondent denied having information of her living in rental house, he knew her staying with her family, and thus he is not responsible to pay house rent even if she stays in the rental home. He says to have tried efforts to bring her back through the elders but she refused, therefore he prays for judgement against the petitioner and orders her to return back home and undertake her business since their children needs both parents care.
5. The Questions of determination in this matter are whether the respondent has paid the dowry of Kshs 15000 for this marriage? Whether the respondent provides for his family or not? Whether the petitioner shifted to Turbi with or without the respondent’s permission?



6. The hearing of the suit conducted, where the petitioner presented her testimony, that she is the second wife to the respondent married under Islamic sharia, at a dowry of kshs 15000, which was not yet paid up to this time of hearing the suit. She also testified to have run away from the matrimonial home due to respondent's first wife, who issued threats to her. She said that due that she rented the house at Turbi after she conceived her last-born child pregnancy reason she is giving that she could not deliver in her mother's home owing to her tribe of Gabra's tradition. She admits the request of the respondent asking her to Hillo where he has started a business but she could not do that due the children and she is required to clear the rent and make preparation to hand over the children to her mother so that she can shift with him where he wanted her to move. She said, she had not refused his request but it was him the respondent who refused to support her by paying the rent required from her together with the upkeep of children. She was required to pay school fees and maintenance for that month (October 2023).
7. She also presented her witnesses who are the elders involved in making resolution of their case. PW2 who said that as elders they found the respondent to be wrong for failing to settle the petitioner as his wife in a home as of her own house. He testified that they married at Nairobi in a lodging but could not make her settled, he could not provide for her maintenance, she has debt accrued to kshs 30000, then she was threatened by the respondent's first wife where costed her ran away from matrimonial home for her safety, whereas the respondent did not bother to make efforts to follow up the issue with the intention to recall back his family, instead he stayed apart for three years, which the issue proof him wrong for failing to play his role as husband.
8. PW2 said, they held him responsible to ensure her settled in a known house, and pay the debt of kshs 30000 incurred in maintaining his children and family, but he proofs to fail in his responsibility. PW3 also gave the same testimony as PW2 as they were involved in the same sitting which found the respondent wrong, hence he said to supports the petitioner.
9. The respondent presented his testimony opposing the claims against him over none maintenance, and other claims. He admits the fighting between the petitioner and his first wife due to jealousy because of been married to him both of them. He said to have intervened the fight and even had punished the first wife for causing the fight. He said to have made the petitioner's home at the side of Ethiopia so that they live separately. He further admits petitioner's ran away due the first wife fighting but blaming the petitioner for ran away without his knowledge. He further admits stayed away for three years despite he claims been made efforts to resolve the dispute through the elder but all the time she declined his resolution. He said to have paid kshs 15000 out of what (debt) she incurred during their separation. He testified that he was to pay even the remaining debt but he said because she refused to resume back. He also said that he had witness to proof his payment of the dowry for this marriage which he failed to adduced the evidence to proof his claims.
10. RW2 presented the evidence that the respondent was found wrong in their elders' sitting to resolve their disputes for failing to settle the petitioner in a home of her own, for being away from the petitioner after her ran away, and for none provision of maintenance during their separation, but also blame the petitioner for refusing to move to Hillo because the respondent has prepared for her a shop to operate.
11. From the above evidences from both sides, it is clear evidence that the respondent is found wrong for failing to provide maintenance to his family as required of him. It is also evident that the petitioner has ran away for her safety from the threats caused by the respondent's first wife. It also evident that the respondent did not settle his wife (the petitioner) in her home or by either renting for her. These evidences as adduced herein above by evidences of witnesses from both sides.



12. It is through the order of this court that the parties were sent back and front to resolve the disputes through the elders (ADR) but finally all the elders from both sides exhausted to intervened them due to lack cooperation from the respondent.
13. Lastly, in this court, the respondent issued the divorce on his demand from the petitioner to forfeit her dowry of Kshs 15000, which was not paid. Thereof petitioner accepted the divorce upon forfeiting her said dowry, thus, she became divorced before the court on *Kbul'ah terms*.
14. Thereafter, this court ordered the respondent to pay kshs 7000 every month for maintenance of three minor children, who are under the petitioner's custody and they are to remain there until further court order issued.
15. The respondent shall provide for them all their needs including school uniforms, home clothes, medical and madrasa fees. As well he shall have access during the holidays.
16. While the petitioner shall observe one-month *eddah* period after which she may marry a man of her choice.

DELIVERED, SIGNED AND DATED AT MOYALE ON THIS 16TH JANUARY 2024.

GALGALO ADAN – PRINCIPAL- KADHI

In the open court and in the presence of both parties:

1. HIK – the petitioner
2. MAH – the respondent
3. Jattani Waqo – Court Assistant

