



**AMD v AMU (Divorce Cause E041 of 2023)  
[2024] KEKC 2 (KLR) (16 February 2024) (Judgment)**

Neutral citation: [2024] KEKC 2 (KLR)

**REPUBLIC OF KENYA  
IN THE KADHIS COURT AT MOYALE  
DIVORCE CAUSE E041 OF 2023  
G ADAN, PK  
FEBRUARY 16, 2024**

**BETWEEN**

**AMD ..... PETITIONER**

**AND**

**AMU ..... RESPONDENT**

**JUDGMENT**

1. The petitioner prays for dissolution of marriage, custody of children, future maintenance, house rent, and dowry. She based her grounds on that the respondent neglected her as his wife and failed to provide maintenance, and her conjugal right. He completely moved out of her matrimonial home and only show up on his issue of marriage. She further states that he occasionally spends the night in a separate room until the time he will leave. She said the respondent despite being a man of means and a prominent business man but failed to fulfil his duty and went a head and married another wife.
2. The respondent did not file defense statement despite he was given enough time to defend himself, after he appeared in court and requested for time without filling any defense. He has not given valid reason to the satisfaction of the court that hindered him from making defense in writing. He laxity and uninterested to make written defense to the claims.
3. On the day when the matter coming for default judgement hearing for formal proof. He again attended the court and wanted to participate in the cause without entering the same, where the court allowed him to respond to the allegations verbally, if he is not willing to put defense in writing nevertheless no reason recorded for the same by the respondent.
4. Issues of dispute are; what amount of dowry entered for this marriage between the petitioner and the respondent? whether it was paid? whether the respondent is guilty of neglecting the respondent in conjugal bed? Whether the respondent failed in providing upkeep for his family.



5. During which the matter proceeded to the hearing with the leave of the court, the petitioner testified that they got married in accordance to Islamic shariah at a dowry of USD 600 equivalent to kshs 60000, which were not paid. She said three children were blessed out of their union, and are under care and protection. She further testified that the respondent neglected her over conjugal bed, as he just comes home whenever he is in need. She said to have not seen him for three months ago, and not paying sufficient upkeep.
6. With the leave of the court, the respondent as well is allowed to respond to the allegations, where he admits the marriage being conducted in accordance to Islamic faith and dowry of Kshs 60,000. He pledges to give her dowry for the second time. Since he alleges to have paid the said dowry on before, without further proof. He also acknowledges her payment of kshs 12000 for house rent but he avers that she is not suppose to be paying that, as in their agreement she was suppose to move to another room with less amount of kshs 6000. He avers, that but she refused to abide by the agreement. He testifies to pay her kshs 20000 on every month, which to him is sufficient amount for her and 3 children.
7. The respondent counter claims against the petitioner for been incited against him by some women who are coming to her for hina decoration. He said, that he wanted to move his wife (the petitioner) to Garisa or Wajir where her family members are there but she refused. He promised to be there visiting her to attend to her right.
8. He also denies allegation over denial of her conjugal bed, he blames her of running away whenever he comes home. He said to have not reported this issue to any responsible elder but kept for himself. However, the petitioner avers that she has sought intervention form one old man who has ever asked him and she promised to bring this old man as witness if the court allows her. She was allowed to bring the said old man in support of her claims but she failed so.
9. Over the issue of lack provision, the respondent denies and presented m-pesa statements showing send of money amount close to kshs 20.000 every month, but the petitioner failed to produce the same m-pesa statements to verify whether she truly has received the same. She withdrawn her claims over lack of provision from the respondent part.
10. Based on the above evidences, it is here that the parties of this marriage entered a dowry of kshs 60000 which not yet paid by the respondent. also, they had disputes and stayed apart for some months without sharing conjugal bed.
11. The cause of this problem as per their testimonies is that the respondent got married to another wife, which the petitioner said to have no problem with this second marriage, however she has that feeling of a woman. But to this court's observation, she was feeling being deprived of her conjugal bed after she demonstrated her feeling of being neglected for some days by the respondent without attending to her.
12. She admits to have run away from the respondent to the next home at night hours for the reason that she was unhappy with him for him stayed away for many days out of home and comes whenever he needs marriage issue (conjugal bed) at his own feeling not for her needs. This was the issue which made her unsatisfied with the respondent being not maintaining justice between her and the other wife.
13. From these instances, the court finds unfair distribution of days spending between his wives by the respondent. The issue which caused disputes between the petitioner and the respondent. Then the respondent did not shown willingness on his side to arbitrate her unsatisfaction by making further effort through the elder's mediation. The minimum effort he did as to his testimony `before the court is by going back and keeping off the petitioner for months. This was not fair in terms treating the wife.



14. Allah has enjoined justice and fairness in all things. He says (interpretation of the meaning): "Allah commands justice [and] the doing of good" [al-Nahl 16:90]
15. Ibn Jareer al-Tabari (may Allah have mercy on him) said: In this Book that He revealed to you, O Muhammad, Allah enjoins justice, which is fairness."(Tafseer al-Tabari 17/279).
16. Allah has forbidden injustice and wrongdoing (dhulm) to His slaves, and He warns those who are unjust or do wrong of punishment in this world and in the Hereafter.
17. It was narrated from Abu Dharr (may Allah be pleased with him) that the Prophet (peace and blessings of Allah be upon him) said, narrating from Allah, may He be glorified and exalted: "O My slaves, I have forbidden dhulm to Myself and I have made it haraam prohibited among you, so do not wrong one another." Narrated by Muslim (2577).
18. Allah has enjoined justice and fairness between co-wives, and there is a warning against wronging one of them at the expense of another. Allah says (interpretation of the meaning):
 

"And if you fear that you shall not be able to deal justly with the orphan girls then marry (other) women of your choice, two or three, or four; but if you fear that you shall not be able to deal justly (with them), then only one or (slaves) that your right hands possess. That is nearer to prevent you from doing injustice" [al-Nisa' 4:3]
19. Shaykh 'Abd al-Rahmaan al-Sa'di (may Allah have mercy on him) said:
 

'... the one who wants to take two or three or four wives may do so, but no more than that, because the context of the verse reminds people of the blessings of Allah, so it is not permissible to add anything to the number that Allah has defined, according to scholarly consensus. That is because a man's desire may not be fulfilled by one wife, so it is permitted for him to take more, up to four, because four is sufficient for anyone, except in rare cases. However, that is only permitted to him if he is confident that he will not be unfair and unjust, and that he will be able to give them their rights.
20. If he is afraid that any of this applies to him, then he should limit himself to one. Limiting it to one applies in the case where a person fears he may be unjust or unfair, and may fail to do what is required, so he should err on the side of caution and not put himself in that position." (Tafseer al-Sa'di p. 163).
21. It was narrated from Abu Hurayrah (may Allah be pleased with him) that the Prophet (peace and blessings of Allah be upon him) said: "**Whoever has two wives and favours one of them over the other, will come on the Day of Resurrection with one of his sides leaning.**" Narrated by al-Tirmidhi (1141), Abu Dawood (2133), al-Nasaa'i (3942) and Ibn Majaah (1969). Classed as saheeh by al-Albaani in Saheeh al-Targheeb wa'l-Tarheeb (no. 1949).
22. Shaykh al-Mubaarakfoori (may Allah have mercy on him) said: Al-Teebi said in his commentary on the words "with one of his sides leaning", i.e., tilting. And it was said that this will be in such a way that all the people on the Day of Resurrection will see him, so this will increase his punishment." (Tuhfat al-Ahwadhi 4/248).
23. Finally, the respondent gave promise to purchase a plot for the petitioner and her children at Namanga as a way of seeking intervention, in case she is willing so to stay in marriage, but she refused his option and insisted to have divorce. After long arguments over whether the petitioner will remain in marriage, the court advised the respondent to divorce on one talaqa and she will stay a grace period of 3 months



and 10 days for eddah, in which she will get time to think over the issue on whether to resume back or may marry any person of her wish.

24. In that case, the respondent will pay dowry of kshs 60,000 to the petitioner, and continue paying whatever he is giving as maintenance without reducing and the children shall remain with the petitioner.
26. Orders accordingly.

**DATED, DELIVERED AND SIGNED AT MOYALE ON THIS 16<sup>TH</sup> DAY OF FEBRUARY 2024.**

**Galgalo Adan - PK**

**Delivered in the open court and in the presence of both parties**

1. Petitioner – Ambia Mahamed Dahir
2. Respondent – Ahmed Mohammed Ulow
3. Court Assistant – Abdirizak Yussuf

