



**BDA v AHB (Matrimonial Cause E004 of 2024)
[2024] KEKC 14 (KLR) (20 February 2024) (Ruling)**

Neutral citation: [2024] KEKC 14 (KLR)

**REPUBLIC OF KENYA
IN THE KADHIS COURT AT MOYALE
MATRIMONIAL CAUSE E004 OF 2024**

G ADAN, PK

FEBRUARY 20, 2024

BETWEEN

BDA APPLICANT

AND

AHB RESPONDENT

RULING

1. By way of notice of motion dated 12th January 2024, the applicant sought for court orders allowing her access of her matrimonial house, payment of her dowry kshs 20000, release of her personal belongings, and any other relief.
2. She sought these prayers under certificate of urgency on ground that the respondent divorced her without paying her said dowry, locked her out of the house and neglected his responsibility towards her.
3. The application is certified urgent owing to its nature of claims hence required to be dealt with on priority basis. The orders for accessibility of the matrimonial is granted pending the hearing and determination of the suit. Hearing fixed on 31st January 2024, while the respondent is required to attend the court and respond to the allegations, before the hearing date.
4. The respondent in his replying affidavit admits the marriage, the divorce issued, and the dowry as not yet paid. He promised to pay it as agreed upon before the elders. However, he denied locking up the personal belongings of the applicant in the house, only he said to have instructed her to find somewhere else to rent, for the reason he mentioned that her living with his son was problematic due to his son and her son ever in quarrel and there will be no peace at all in his house.
5. From the above claims and response, it is clear that the issue for determination are, whether the respondent denied access to her personal belonging by locking up the matrimonial house? What amount of dowry due for payment?



6. During the hearing the applicant testified that the respondent denied her personal belonging by closing up clothes and other items in the house and travel to Samburu to his work place. She avers this after her divorce in front of the elders. She testified that the respondent divorce due to quarrels over his son from another wife and her own son from previous marriage with another man. She further said that he blames her over his son and while himself does not show fairness between her son and his son. She also claims of abusive languages and beating of her son from another marriage. Again, she claims assault from the respondent own son who replicate to his action on how the respondent treats her in front of the son.
7. On this averment the respondent admits the quarrels of his son and the applicant's son from his replying affidavit where he gave reason for instructing her to look for a rental house somewhere else after the divorce instead of them living in the same house with his son for the duration eddat. But the applicant replied to this allegation as not the reason for moving her from the matrimonial house, as that they lived in a different room from where the said respondent's son residing in.
8. This indicating the quarrels of the two sons has to some extent contributed to their dispute is, despite there may be other causes; dissatisfaction between the two parties of the marriage leads to mistrust due to lack of fair treatment of either son from either side, which then not been satisfactorily proved to this court.
9. Also due to lack sufficient provision which to the averment of the respondent providing Kshs 5000 for a month, which to this court was not enough to cater for a family like this, especially if there is misunderstanding between them. Because, misunderstanding triggers up claims which were silent during when the parties were not in quarrels. May be the amount which was provided was not sufficient but due to parties have understanding they never raise it as a case against each other. Now because they have misunderstanding it becomes ground of dispute, thus the court finds the amount said to be provided by respondent as not enough to cater for the family.
10. She similarly, attest that she has been operating her small business before their marriage, but later she said the respondent stopped her business and not providing sufficient upkeep to cater their needs. It is in admission that the applicant was operating small business has stopped since she gets married to the respondent, but she claims him for that for failing to facilitate continuation of her business operation. As she as well admits his one-time effort which he provided only Kshs 7000, but which was not enough. This showing the respondent has at least made effort to assist the applicant despite she said it to be not enough to set up again the intended business. They used the said amount for the family use. She has raised that concern to him but did not took it up. Thus I find the respondent did not sufficiently catered for continuation of applicant's small business.
11. To my considered view the respondent is guilty of moving the applicant from the matrimonial home for duration of eddat which she is entitled to maintenance, relating to food, clothing and accommodation. He has to provide the same way they have been living together in marriage, according to his means and the needs of the wife and the children.
12. The full mahr that was agreed upon, both the earlier portion, if any of it is still outstanding, and the delayed portion, because the Messenger of Allah (peace and blessings of Allah be upon him) said: "If he has consummated the marriage with her, then the *mahr* is hers because of his intimacy with her." Narrated by *al-Tirmidhi* (1102); classed as saheeh by al-Albani in *Irwa' al-Ghaleel* (1840) Shaykh Saalih al-Fawzaan (may Allah preserve him) said:
13. The woman who has been revocably divorced is still a wife so long as the '*iddah*' continues, and she is entitled to the same as other wives of maintenance, clothing and accommodation. End quote.



14. Secondly, he has not paid the dowry amount of Ksh 15000, which the respondent should pay it. Thirdly, the respondent has to pay the pending debt kshs 10000, which the applicant incurred with the request of the respondent and which he did not pay it. He has to pay cost of T.V screen kshs 6000, Duksi fee 2400 and clothes kshs 1300 up to total amount of kshs 34700.
15. Finally, with the intervention of court, the applicant forfeited some amount in excess of kshs 30000, hence he will be liable to pay installment of kshs 5000 for six months.

DATED, DELIVERED AND SIGNED AT MOYALE ON THIS 20TH FEBRUARY 2024.

IN THE OPEN COURT AND PRESENCE OF THE PARTIES.

Mrs. BDA – the applicant

Mr. AHB – the respondent

Court Assistant _ Abdirizak Yussuf

BY HON GALGALO ADAN – PRINCIPAL KADHI

MOYALE KADHI'S COURT.

