



RCC v SKI (Matrimonial Cause E007 of 2024) [2024] KEKC 4 (KLR) (7 March 2024) (Judgment)

Neutral citation: [2024] KEKC 4 (KLR)

**REPUBLIC OF KENYA
IN THE KADHIS COURT AT MOYALE
MATRIMONIAL CAUSE E007 OF 2024**

G ADAN, PK

MARCH 7, 2024

BETWEEN

RCC APPLICANT

AND

SKI RESPONDENT

JUDGMENT

1. This is matrimonial case brought under certificate of urgency seeking for orders to compel the respondent to pay house rent arrears to facilitate opening of matrimonial home by the landlord.
2. She based her grounds on that the parties of this case are legally married according to Islamic shariah on 18th April 2016 at unpaid dowry of Kshs 100,0000. She avers that she had been involved in a road accident and sustained injuries which she said underwent two major operations. She alleged that during this incident the respondent declined to check on her and kept her off while living in the matrimonial home all the months she was hospitalized without even paying the set rental charges.
3. The applicant said on her resuming the matrimonial home she found the rental charges accumulated to Kshs 45000; hence the landlord locked the matrimonial home entirely detaining all her properties including her clothes. She then relies entirely on her mother for clothing and shelter hence she is greatly inconvenienced.
4. The respondent admits the marriage with the applicant conducted in according to Islamic shariah and the dowry entered for the same at Kshs 100,000 which he admits as not yet paid. He avers that marriage is not blessed with any child, which the applicant also agreed with.
5. He further agreed to the petitioner’s averment about her going under operation, but he denies the other allegations he did not provide her with any support during her hospitalization. He avers that he paid his support to his ability. He admits rent accumulated due to his inability to pay because two of his children were attending high school, however, was paying the rent before that to his financial ability.



6. He also states that he has his first wife with five children in school while three in high school. He also states that in November and December 2023, he was away for medical checkup in Nairobi, and he came back in January 2024, and he found the house is closed. He further states his mother was also sick and requires medical attention. He attached his monthly pay slip as proof of what he earned which to him was not sufficient to cater for everything needed by his family.
7. Finally, in his response, he said that he had asked the petitioner to support him in paying part of the accrued rent kshs 25000, but she declined. He therefore admits paying all what the petitioner is seeking in case he gets them but as of now he doesn't have anything apart from the said pay of kshs 19000 per month. He promises to pay the accumulated rent and the dowry before he dies.
8. From the pleadings, both parties agreed on marriage and the dowry entered at Kshs 100,000 has not been paid. They also admit that they did not have been sired with him any child together since their marriage.
9. The issue of determination is whether the respondent has paid support to the applicant during her period in which she was hospitalized? Whether respondent has ability to offset the accumulated rent of Kshs 45000?
10. On hearing, both parties testified. The applicant adduced evidence that she was hospitalized 3 times, but the respondent did not support her with anything. PW3, an elder called to intervene in the dispute between these couples, supported the claim of failing to support the applicant at the hospital by the respondent, as they found him wrong for not visiting his sick wife at the hospital.
11. Further in their cross examination by the respondent towards the applicant, in which she answered the respondent who is her husband only gave a visit to her at hospital after close of class work in the evening, and at lunch hours which he comes to eat with him the food brought for her at the hospital by her sisters. She said to give excuse for him as not having anybody to cook for him since she is hospitalized, maybe the reason as why he eats with her.
12. She further said he had never brought food for her from the hotel, nor purchased any drug for her. She was using her own money as she was also earning for been a teacher like him. However, she further said that she is married to him as his wife he would have carried out his duty of providing for the family. She adduced that even from their marriage she has been providing for food and he used to pay only the rent of kshs 5000 every month before it was accumulated.
13. In answering to the claims, the respondent averred that he has been visiting her at the hospital but did not show further evidence on how he gave support and what he offered in terms of buying drugs or paying hospital bills for that case. He has proof of failing in his duty despite being duty-bound by the law to his family and to his efforts. He has not provided so far, any witnesses to testify in his support or evidence to proof whatever he claims. He only produces pay slips which the same was not verified as the true picture of what he is getting, and nor not known as the only income.
14. In my view, it seems the respondent has not attended to support the applicant who is his wife while having a problem. He did not say spent nights at the hospital or spent some amount in purchasing her drugs. He only said paying visit like any other person or even a relative visiting a sick person at the hospital. Therefore, the visits he is claiming are not satisfactory.
15. Also, over the issue of rent accumulated, PW2 who area chief attended to their case, testified in support of the applicant by finding the respondent should pay the said rent and ensure the house is open so that they get to live with peace. PW2 was not convinced by the respondent's claims that he failed to pay the rent because of the children's school fees which according to PW2's view, the priority is him



- to ensure where to sleep before thinking of other things. PW2 argue that Kshs 5000 for rent is small for the respondent and the applicant who are both employed, if they can pay if maybe they make good arrangement of their budget.
16. The applicant further testified that the respondent after she went out of the hospital, she found him he had already moved out of the matrimonial home with his son from another wife and who was living them. He went to rent another house on rent while he failed to pay for their matrimonial home. She said he left all her belongings in the locked house.
 17. But this specific claim was not defended by the respondent as he also admits the same as true, because he could not pay the accumulated rent, which then he said deciding to move. He said to had asked her to come and live with him in that one room which to her is not enough for the two and the said son to live in. Besides, she had her Furnitures and personal items in their locked house, which the same cannot also be released to them unless the said rent is paid.
 18. Likewise, to the view of this court the respondent could have find a way to pay the said rent before it accumulates or make sure the accumulated *is paid through borrowing and then clear the debt borrowed using the amount of kshs 3000 which he says paying to one room which he moves to with his son. Also, leaving away the applicant and going for another room will clearly show that the respondent has no interest in his wife the applicant.
 19. The Prophet has said: “when God endows you with prosperity, spend first on yourself and your family.” maintenance of the family is a legal duty of the husband, even if the wife is rich. Men are tagged as the “Qawwamun” that is, the protectors and maintainers of women, in the Qur’an. This is due to the maintenance responsibility imposed on men by Allah SW. This can be seen in Q4:34: “Men are in charge of women by (right of) what Allah has given one over the other and what they spend (for maintenance) from their wealth”. Therefore, men have a greater and more difficult responsibility in supporting their families. The Prophet of Allah (SW) stated: “Men are the guardian of his family, and every guardian has responsibilities towards those under his guardianship”.
 20. Giving a wife her dower (*mahr* or *Sadaq*), is one of the duties of the husband that must be fulfilled before the marriage can be considered legal. The dower is given in any materials the wife prefers. It may be money, jewellery, or other materials. Its mode of payment depends on the agreement between both parties. It may be paid in instalments or deferred, the wife may also return part of the dower to her husband and at the same time it may be paid immediately before the contract is sealed. Whichever way it takes it is a right of the wife and the duty on the man that must not be jettisoned.
 21. The holy Qur’an says: “And give the women (upon marriage) their (bridal) gift graciously. But if they give up willingly to you anything of it, then take it in satisfaction and ease”
 22. In this matter the respondent did not pay the deferred dowry of Kshs 100000 for his wife the applicant. So, they must agree on how it will be paid based on ability of the husband.
 23. As well, maintenance (Ana-Nafaqah), which includes provision for her feeding, clothing, shelter, health care and all the expenses that corroborate the well-being of the home. This is made obligatory on the husband by the Qur’an, the prophetic traditions and the consensus of the ‘obligatory on the husband by the Qur’an, the prophetic traditions and the consensus of the ‘Ulama’
 24. In the Qur’an 2:233: “...and upon the father is their (i.e. the mother’) provision and their clothing according to what is acceptable. No person is charged with more than his capacity”. In another verse Q65:6 Allah says: “Lodge them (in a section) of where you dwell out of your means and do not harm them to oppress them. And if they should be pregnant, then spend on them until they give birth....”



25. Among the traditions of the prophet in support of this maintenance are narrated by Muawiyah al-Qurshayri, may Allah be pleased with him, He said: I said oh the Messenger of Allah what is the right of our wives on us? The Prophet said: You should feed her when you eat, you should clothe her when you clothe yourself, don't ever beat the face (of the wife), don't insult (her) and don't neglect her except in the house". (Ahmad, 1981).
26. Except the woman proves recalcitrant (Nashizah) to her husband for no cause should he leave her not catered for according to his capability. But failure to provide maintenance deliberately without any cause will amount to sin before the wife and then before Allah.
27. Here, the applicant has not been recalcitrant to her husband. It is the husband who failed in his duty of providing her with maintenance. She may seek for divorce on ground of failing to provide maintenance either because of his neglect or he has no means to provide. In both cases the result would be the same.
28. In this case, the respondent admits living separate from the wife applicant for some months, which has led to his failure to perform conjugal obligation required from him towards his wife. This one also would be considered as another account for divorce.
29. Finally, it is hereby ordered as follows:
 - i) That the respondent must pay the accrued rent as at February 2024 sum of Kshs 50000.
 - ii) That the respondent shall pay according to his means and ability liaising with the landlord,
 - iii) That in case they will not agree, the respondent must do any means available to him to ensure his wife applicant gets her belongings from the locked house through amicable discussion with the landlord.
 - iv) That the dowry of Kshs 100000 must be by the respondent to the wife applicant as per their agreed mode of payment.
 - v) in any way, the parties may agree to divorce each other on mutual agreement or if that not possible the wife may apply for divorce through the court.
 - vi) That no further order as to the cost of the suit.
 - vii) any unsatisfied party may appeal against this decision within 30 days from the date this judgement.

DELIVERED, DATED AND SIGNED AT MOYALE ON 7TH MARCH 2024.

GALGALO ADAN

PRINCIPAL KADHI

In the presence of:

Jattani Wako – Court Assistant

Ralia Choke Chufe – the applicant

Shama Kosi Ingi – the respondent

