



**SFD v AA (Divorce Cause E002 of 2024) [2024] KEKC 31 (KLR) (6 June 2024) (Judgment)**

Neutral citation: [2024] KEKC 31 (KLR)

**REPUBLIC OF KENYA  
IN THE KADHIS COURT AT MOYALE  
DIVORCE CAUSE E002 OF 2024  
A GALGALO, PK  
JUNE 6, 2024**

**BETWEEN**

**SFD ..... PETITIONER**

**AND**

**AA ..... RESPONDENT**

**JUDGMENT**

1. This petition was filed on 15<sup>th</sup> February 2024 seeking dissolution of marriage between the petitioner and the respondent, custody of the children, payment of the petitioner’s dowry to two heifers of 3 years, and maintenance of the children.
2. The petitioner brought this cause on grounds that the respondent is irresponsible husband who is addicted to drugs including alcoholic, Bhang and Miraa, causing disturbance, quarrels, and violence, disrespecting her family and his own family.
3. The respondent was served through a court process server, but he did not appear and defend the case. Whereas the petitioner applied for default judgement against the respondent. The court allowed her to settle the matter for formal proof in the absence of the respondent who is aware of this matter but decided not to defend it.
4. During the hearing, she states that the respondent is irresponsible and does not provide maintenance drinks alcohol chew miraa and smokes Bhang. She testified that he comes late at night while causing disturbance by making noises, quarrels, violence, and doing all sorts of unrespectable behaviors Infront of children, family members, and in-laws. She says due to his behaviors she had overstressed, mentally tortured, demoralized and affected her children’s school performance. She avers that the respondent subjected her to assault while she was nursing for been went on an operation where she sustained injuries led her been hospitalized. She also avers that the respondent was charged in court with growing cannabis (Bhang) in his compound and he is out with bond. Also, in her absence when accompanied her late mother in a hospital, the respondent put his kids at risk by making them spend night in the same



house with his drunkard friends. Another problem she said the respondent brought home alcohol, then poured in a glass and left unattended to and his daughter of six-year-old daughter nearly drink it if it wasn't for the petitioner's intervention, she asked him about the incident he started quarrel and threatened to kill her and cross the border.

5. She presented testimonies of four witnesses beside her own testimony. The said witnesses are all from both sides of the family, two from the respondent's close family who are his uncles, and two from the petitioner's family. They all testified against the respondent for his bad character of drinking alcoholic, smoking Bhang, chewing miraa, being violent, quarreling, abusive and irresponsible towards his family and wife.
6. As per Islamic shariah conducting proceeding and passing judgement in absence of the defendant is allowed when the defendant hide from appearing before the judge and it is not possible to get him. The respondent was served with claims and aware of this proceeding going on against him, he preferred not to defend himself. This condition allows the court to pass judgement against absentee defendant. This view supported by the precedence judgment of the messenger of Allah the Prophet Muhamed (P.B.U.H), when he judged against the Arabs who killed the shepherd. It is also reported by Umar, Othman, and a group of companions (R.A) that the judgement of the absentee is permissible if the truth was true before it.
7. I have considered the evidence produced by the petitioner before and hold that the respondent is guilty of all allegations thus it is hereby ordered as follows:
  - a. That the marriage between the respondent and the petitioner is dissolved.
  - b. That in the event of order (a), the petitioner shall observe *iddah* period of three months in which she will not marry any other man unless the period ends.
  - c. That the custody of the children shall be remain with the petitioner, but the respondent shall have access to the said children on condition that he will not cause any form of violence.
  - d. That the respondent shall pay dowry of two heifers of three years old or equivalent amount in form Kenya shillings as per market price.
  - e. That the respondent will provide maintenance during *iddah* and future maintenance for the children at a rate depending on his means and the children's needs.

**DELIVERED IN THE OPEN COURT AT MOYALE ON 6<sup>TH</sup> JUNE 2024.**

**BY GALGALO ADAN – P.K SINGED**

In the presence of:

Safi Fugicha – the petitioner

Umuro Issacko – C/A

And in absence of:

Abdilatif Abdikadir – the respondent.

