



REPUBLIC OF KENYA



KENYA LAW
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**SMA v JMH (Miscellaneous Case E105 of 2024)
[2024] KEKC 22 (KLR) (17 October 2024) (Ruling)**

Neutral citation: [2024] KEKC 22 (KLR)

**REPUBLIC OF KENYA
IN THE KADHIS COURT AT WAJIR (HABASWEIN)
MISCELLANEOUS CASE E105 OF 2024
DA IBRAHIM, SRK
OCTOBER 17, 2024**

IN THE MATTER OF

**SMA 1ST APPLICANT
JMH 2ND APPLICANT**

RULING

Introduction

1. The matter before the court is an application made by the 1st and 2nd Applicants for the formal registration of their marriage, solemnized on 2nd February 2021, in accordance with Islamic Sharia law. The Applicants are seeking the issuance of a marriage certificate under the provisions of the *Kadhis' Courts Act* and the applicable Kenyan and Islamic law. Both parties are present in person, and their statements have been duly recorded. Witnesses have also provided statements supporting the marriage.
2. The application was duly filed on the 17th of October 2024, and the hearing was conducted on the same day, in accordance with the procedural efficiency of the Kadhis Court.

Issues for Determination

3. The issues for determination by the court are as follows:
 - a. Whether the marriage between the 1st and 2nd Applicants was validly solemnized under Islamic Sharia law.
 - b. Whether the Applicants are entitled to formal registration of their marriage under Kenyan law.
 - c. Whether the failure to pay the agreed dowry (mahr) affects the validity of the marriage.
 - d. The applicable legal provisions and precedents governing this matter.



Analysis of the Facts

4. The Applicants' statements confirm that they were married in Habaswein, on the 2nd of February 2021, in accordance with Islamic Sharia law. The marriage was witnessed by two individuals: SRD and MAA, who have both testified in this court. It is also acknowledged that the agreed dowry (mahr) of Ksh 100,000 has not been paid to date.
5. The 1st Applicant, SMA, and the 2nd Applicant, JMH, are both Kenyan citizens, currently residing in Habaswein. They have two children, MS (two and a half years old) and MS (one year old). They have cohabited since their marriage and continue to live as husband and wife.

Legal Framework

6. The applicable legal framework for this matter includes:

a. Kenyan Law:

7. Under the *Kadhis' Courts Act* (Cap 11 of the Laws of Kenya), Kadhis' Courts have jurisdiction to determine questions of Muslim personal law, including matters related to marriage, divorce, and inheritance where all parties profess the Muslim faith. Section 5 of the *Act* empowers the Kadhi to oversee and register marriages conducted in accordance with Islamic law.
8. Additionally, Article 45(4) of the *Constitution of Kenya*, 2010, recognizes the right of individuals to marry under systems of personal law, including Islamic law. The *Marriage Act* of 2014 also provides for the formal registration of marriages solemnized under different religious and customary systems.

b. Islamic Law:

9. The marriage between the Applicants falls under the jurisdiction of Islamic Sharia law. Under the four Sunni schools of Islamic jurisprudence—Hanafi, Maliki, Shafi'i, and Hanbali—marriage (nikah) is a solemn contract (aqd) that requires mutual consent, the presence of witnesses, and the payment or agreement on dowry (mahr).
10. While the payment of dowry is a condition of marriage under Islamic law, the non-payment of dowry at the time of marriage does not invalidate the marriage itself. Rather, it creates an obligation on the husband to pay the mahr at a later date. This position is upheld across all four schools of Islamic thought. In this case, the dowry remains unpaid, but it does not affect the validity of the marriage contract.

Relevant Case Law

11. Several precedents in Kenyan courts have affirmed the role of Kadhis in formalizing and registering Islamic marriages. In *MAH v. FA* [2017] eKLR, the court held that the failure to pay dowry does not invalidate an Islamic marriage as long as the essential requirements of the marriage contract are met, including the presence of witnesses and mutual consent.
12. In *A v. J* [2015] eKLR, the Kadhi ruled that the parties to an Islamic marriage have a right to request the formal registration of their marriage, even after several years, as long as they are living together as husband and wife.

Application of the Law to the Facts

13. Based on the facts and the legal framework, this court finds the following:



- a. The Applicants' marriage was validly solemnized under Islamic Sharia law. The essential elements of marriage under Sharia law, including mutual consent, the presence of witnesses, and an agreement on dowry, were met. The non-payment of dowry does not invalidate the marriage but remains a debt owed by the 1st Applicant to the 2nd Applicant.
 - b. The Applicants are entitled to the formal registration of their marriage under both Islamic and Kenyan law. The Marriage Act of 2014 allows for the registration of marriages conducted under religious rites, and the Kadhis' Courts Act empowers this court to register marriages conducted under Islamic law.
14. While the dowry remains unpaid, this court notes that the 1st Applicant is still under an obligation to fulfil this commitment. However, the court does not consider this a bar to the formal registration of the marriage.

Conclusion and Orders

15. In view of the above, this court makes the following orders:
1. The application for the formal registration of the marriage between the 1st and 2nd Applicants is hereby allowed.
 2. The marriage between the 1st and 2nd Applicants, solemnized on the 2nd of February 2021, is formally registered under the applicable laws.
 3. A marriage certificate shall be issued to the Applicants in accordance with the Marriage Act, 2014.
 4. The 1st Applicant is reminded of his obligation to pay the agreed dowry of Ksh 100,000, which remains a debt owed under Islamic law.

It is so ordered

DATED DELIVERED AT HABASWEIN THIS 17TH DAY OF OCTOBER 2024

HON: DADACHA.A IBRAHIM

SENIOR RESIDENT KADHI

In the presence of :-

Najma Farah ;Court Assistant.

SMA:1st Applicant

JMH:2nd Applicant

