



**FIA v HM (Divorce Cause E007 of 2024) [2024] KEKC 24 (KLR) (26 November 2024) (Judgment)**

Neutral citation: [2024] KEKC 24 (KLR)

**REPUBLIC OF KENYA  
IN THE KADHIS COURT AT NAKURU  
DIVORCE CAUSE E007 OF 2024  
IN NYABOGA, SRK  
NOVEMBER 26, 2024**

**BETWEEN**

**FIA ..... PETITIONER**

**AND**

**HM ..... RESPONDENT**

**JUDGMENT**

1. The petitioner through her petition approached this honorable Court on 23<sup>rd</sup> September 2024 and prayed for against the respondent for orders that;
  - a. The marriage between the petitioner and the respondent be dissolved and divorce certificate be issued.
  - b. The cost of the petition be provided.
  - c. Any such further relief be granted as deemed fit by this Honorable court.
2. The respondent was duly served vide affidavit of service dated 3<sup>rd</sup> October 2024 and filed before this Court on 6<sup>th</sup> November 2024 together with a request for judgment against the respondent.
3. The matter came up for hearing on 12<sup>th</sup> November 2024 and only the petitioner was present and thus the matter proceeded ex parte.
4. The petitioner testified that she celebrated her marriage to the respondent 20<sup>th</sup> June 2004 in Mukuru Kwa Njenga within Nairobi County in the Republic of Kenya
5. The petitioner stated that the marriage was conducted in according to Islamic Law.
6. She further stated that after the marriage ceremony, they cohabited as wife and husband in Mukuru Kwa Njenga which marriage was blessed with six issues minus one deceased shortly after birth.



7. The petitioner stated her marriage to the respondent has been having problems throughout since the beginning as a result of the respondent who does not trust her and instead accuses her of being in extra-marital affairs with other men.
8. She stated that every time she becomes pregnant, the respondent accuses her of being pregnant as a result of having affairs out of marriage but after delivery, the children have been resembling and as a result, he withdraws the accusations.
9. The petitioner stated that throughout these problems, she has been engaging elders who have always been finding the respondent to be on the wrong side until lastly on 3<sup>rd</sup> February 2022 when to my mother in Moyale together with our three youngest children.
10. The petitioner stated that the respondent called her and said that he will come to Moyale to only pick his children as he doesn't need the petitioner.
11. After some days, the respondent came to Moyale together with other elders who wanted us to settle the dispute and after deliberations, they found the respondent to have wronged the petitioner.
12. The petitioner stated that he requested that they shift from Mukuru Kwa Njenga to a different place since he was being incited by people there.
13. The petitioner stated that the respondent said that he is going to think about shifting from Mukuru Kwa Njenga and he left with the elders and after that he never responded to her and when she used to ask for the support of the children, the respondent was asking that the children be surrendered to him.

**Determination:**

14. The one question to respond to in this petition is whether the petitioner has satisfied the Court in her testimony to be granted a divorce order.
15. The Holy Qur'aan states that: "And among His signs is that He has created for you spouses from among yourselves so that you may find comfort in them. And He has placed between you compassion and mercy. Verily in that are signs for people who reflect." 30:21
16. The above authority states some of the objectives of marriage which if they fail to be found between a husband and wife, then the marriage may be considered unproductive as either the husband or wife or even both will be uncomfortable in their relationship which might lead to some other harm and evil.
17. Among the major Islamic Jurisprudence Principles is the principle of "harm must be got rid of" either physical, emotional, mental, psychological or any form of harm.
18. There are several ways of getting rid of harm in a marriage relationship and among that is divorce which is placed as the last solution after the others have failed to work.
19. The petitioner stated that throughout the period she has been going through challenges in her marriage to the respondent, she has been engaging elder in reconciling between them which is also a means of getting rid of harm in a marriage but it has been working temporarily and the respondent resumes back to his conduct which is harming the petitioner.
20. The respondent even after being served with pleadings never responded nor appeared during the hearing for purpose of defense.
21. Assuming the respondent made appearance before this Court, the Court would have referred the matter to Court Annexed Mediation or to similar forums to first try to reconcile since the parties



have been blessed with children as terminating a marriage is not something which is preferred but as the respondent has ignored, justice has to be given expeditiously as stated by Imaam Izzudiin Ibn Abdissallaam that : “The purpose in appointing judges is to do justice to the oppressed against the oppressors and to avail rights to those who deserve and to protect those incapable of protecting themselves like the minors, the insane, the extravagant and those who are not available when dispensing justice, as a result, utilizing the shortest and expeditious way in dispensing justice is necessary.” Qawaaid Al ahkaam fi Maswaalihi Al Anaam, 2:43

22. From the unchallenged testimony of the petitioner, I give the following orders:
- a. THAT the petitioner herein be and is hereby divorced from the respondent
  - b. That there is no order as to costs.

**DATED, SIGNED AND DELIVERED AT NAKURU THIS 26<sup>TH</sup> NOVEMBER 2024**

**IDRIS N. NYABOGA**

**SENIOR RESIDENT KADHI**

In the presence of:

Court Assistant

Petitioner

