



**NMO v AHO (Matrimonial Cause E001 of 2024)
[2024] KEKC 26 (KLR) (18 December 2024) (Judgment)**

Neutral citation: [2024] KEKC 26 (KLR)

**REPUBLIC OF KENYA
IN THE KADHIS COURT AT KERICHO
MATRIMONIAL CAUSE E001 OF 2024
IN NYABOGA, SRK
DECEMBER 18, 2024**

BETWEEN

NMO PETITIONER

AND

AHO RESPONDENT

JUDGMENT

1. The petitioner through his petition approached the Honorable Court on 30th June 2024 and raised the following complaints against the respondent:
 - a. That the respondent left her matrimonial home in Kisii County on 27th June 2024 accompanied by her brother and went to Mombasa.
 - b. That the respondent left her matrimonial home without the consent of the petitioner.
 - c. That the respondent’s travel to Mombasa while pregnant without proper mechanism may lead to miscarriage.
 - d. That the respondent had no proper reason to travel to Mombasa.
 - e. That the respondent had been cruel since they celebrated their marriage.
2. The petitioner concluded that as a result of the conduct of the respondent, the respondent is Naashiza (disobedient wife).
3. Strangely, the petitioner never prayed for any order against or in favor of any party in the suit.
4. The respondent made her response and denied almost all the allegations in the petitioner’s petition and instead averred that it is the petitioner who had wronged her and further that the petitioner intended to demean the respondent’s good character together with respondent’s family without apparent causes whatsoever.



5. The respondent further stated in her written response that the marriage between the petitioner and the respondent was arranged during a time when the respondent was a laborer in Qatar.
6. The respondent stated that however her belonging to a descent and religious family, she accepted marrying the respondent with good intention based on spiritual aspect unlike the petitioner who seemed to have not been ready for a family responsibility.
7. The respondent averred that immediately after the marriage ceremony, the respondent and the petitioner proceeded to live in Lamu County as the petitioner had no further intentions to resume to his work in Qatar.
8. She stated that they later went to Kisii County where the petitioner's parents reside and thereupon, the petitioner opted to seek employment and to settle in Kisii.
9. The respondent stated that her life in Kisii was very far and uncondusive.
10. The respondent went on to state that in residing at the petitioner parents' house was against their agreement prior to the marriage in that they were to reside in their separate matrimonial home.
11. She stated that she was never allowed to take her responsibilities as a wife as the petitioner's parents were comprehensively administering and taking full charge of the day-to-day activities in the house including decision making.
12. The respondent further stated that the petitioner had intended her to live under duress and suppression rather as a standard house-help under strict dictatorial without her interests and choice of lifestyle.
13. She continued stating in her response that it is indeed commonly obvious that the relationship between a mother-in-law and daughter-in-law and sister-in-law is never at all harmonious thus just after a while the respondent was never a darling anymore to all members of the petitioner's family.
14. The respondent stated that owing to the fact that the petitioner's parents loved their son more than what is expected of parents thus any misfortunes and misdeeds raised by the petitioner were not significantly restrained by the home elders.
15. The respondent stated that it is unfortunate that the petitioner is a mogoka addict rendering sexual gratifications at the rare instances far much below average to any normal lady however at many instances the petitioner is sexually docile due to the Meru Agricultural evil product.
16. She stated that the situation ran from bad to worse when the respondent by chance conceived and ended up with not even medical attention from the petitioner and was left to maintain with the burden of domestic responsibilities just like as was healthy as sympathy and apathy are not in the petitioner's vocabulary.
17. The respondent also averred that she came to find out the petitioner was involved with commercial sex worker which led him to coming as late as past 2:00AM with hostilities, arrogance and defiance to the respondent.
18. She further stated that she experienced very minimum value and fun in her marriage to the petitioner due to the fact that the petitioner lacks appreciation to the marriage.
19. The respondent stated also in her defense that it reached a time when they were not even communicating as the petitioner had threatened to kill the respondent so that he can marry a lady of his choice without causing psychological injuries to his father.



20. The respondent stated that her patience and perseverance ran out when she was left to medically care for herself in her maternal health care and clinics with nobody showing any sign of concern of her maternal complications.
21. The respondent stated that her last days in Kisii were so tormenting as she was increasingly being anemic without the petitioner's support/concern rendering the respondent to seek financial assistance from maternal home and friends.
22. The respondent stated that she has maximum honor to her marriage to the petitioner and wishes to rest all deterring misfortunes derived from the petitioner but in strict Islamic prescription/jurisprudence based.
23. Lastly, the respondent prayed for:
 - a. The dismissal of the suit.
 - b. Costs in the cause.
 - c. Any other relief the Honorable Court may deem fit and just to grant.
24. The Honorable Court referred the matter to the Court Annexed Mediation (C.A.M.) on 7th August 2024.
25. The matter came back for directions and parties had not settled and thus matter was fixed for hearing on the 7th November 2024.

Petitioner's Case

26. During the hearing, the petitioner testified that he celebrated his marriage to respondent in accordance to Islamic Law on 9th December 2023.
27. He stated that the marriage ceremony was conducted in Makupa, Mombasa County and after that he and the respondent stayed in Mombasa for ten days then they went to Lamu County and spent twenty days then lastly travelled to Kisii County where they resided until the time of filing this suit.
28. The petitioner stated that there occurred a misunderstanding between himself and his mother-in-law as she had called his mother instead of the petitioner and asked her that she wanted the respondent to travel to Mombasa.
29. The petitioner stated that later the respondent's mother called his mother while he was present and the phone was handed to him so as to speak to the respondent's mother.
30. The petitioner stated that the respondent's mother told him that he was sending the respondent's brother to Kisii to pick the respondent and he refused.
31. The petitioner stated that the respondent left their home with the assistance of her brother and they travelled to Mombasa and that's why he filed this case.
32. The petitioner further stated that the respondent's relatives were abusing his family using indecent language.
33. The petitioner went on to state that he has not been communicating with the respondent has the respondent blocked his phone number.
34. He stated that he never tried any other means to communicate with the respondent.



35. The petitioner prayed for an order that the respondent to return to Kisii as she had left without his permission.

Respondent's Case:

36. The respondent who was represented by his brother through a special power of attorney stated that it is generally known in Islamic Law that a son of mother is not supposed to get married because he will not have a say in his marriage but further stated that he does not know any authority from the sources of Islamic Law.

37. The respondent stated that the respondent and the petitioner before celebrating their marriage had agreed that they will reside in Lamu County where the petitioner was already building a house and they were not to reside in Kisii County.

38. The respondent further stated that after the marriage ceremony, the respondent spent the first night chewing mogoka instead of concentrating with his newly wedded wife and this shows that the petitioner did not honor the marriage.

39. The respondent stated that the petitioner was moving her from one of his relatives' homes to another for almost one week after the marriage ceremony as if he didn't know where they will be staying then lastly took the respondent to Kisii to visit his parents who are residing there.

40. The respondent went on to state that they were supposed to return after completing the visit but surprisingly, the petitioner decided that they will settle there in which his parents were the ones who were providing for and running everything in the household and as a result, this caused frustration to the respondent who was always asking the petitioner when will they be returning from the visit.

41. The respondent states that after she saw that the petitioner had found a job in Kisii, she was convinced that they are not going to return from their visit and thus engaged her parents who requested that she be taken to Mombasa as she was pregnant and there ensued a dispute between the respondent's and petitioner's parents as the petitioner's side raised concerns that the respondent is lazy and does not like people in the house.

42. The respondent stated that the petitioner, his parents and respondents' parents agreed that the respondent will be taken to Mombasa but as it was taking too long for that to happen, the respondent's relatives sent the respondent's brother to go and pick her and travel with her back to Mombasa.

43. The respondent stated that since she left Kisii for Mombasa, the petitioner has not even once communicated with her and that is evidence that the petitioner doesn't care for the respondent who is also pregnant but instead went further to file a suit against her.

44. The respondent went on to critique the claim by the petitioner that she left Kisii without his permission stating that the petitioner himself, his parents and her parents were all aware that the respondent was supposed to travel to her parents in Mombasa.

45. The respondent sought from the Court that the petitioner to rent a house for her in Mombasa and not in Kisii and further take full his responsibilities and not to rely on his parents in order to show seriousness in his marriage to the respondent.

46. The respondent further sought that the petitioner should consent to the above and sign to show commitment.



Determination:

47. I have considered the petitioner and respondent's case and find that there is no dispute that the parties celebrated their marriage in accordance with Islamic Law and cohabited as husband and wife for a short period in the coastal region and then in Kisii for rest part of the marriage until the respondent returned to her parents in Mombasa County. I further find that none of the parties is intending to terminate the marriage but instead both of them are willing to retain their matrimonial relationship except that they differ on where the respondent is supposed to reside. The petitioner wants the respondent to go back to Kisii where they have been residing together with the petitioner's parents for a couple of months since celebrating their marriage ceremony but the respondent has refused and instead wanted a separate home and that it be in the coastal region and not anywhere else.
48. So, the real issue as I find from the averments of both the petitioner and the respondent is about the residence of the respondent after celebrating her marriage to the petitioner. Is the residence of the respondent supposed to be in Lamu or Mombasa or Kisii? And before that, did the petitioner and respondent agree before celebrating their marriage on where to establish their matrimonial home which is also supposed to be the residence of the respondent herein or it is something which they never addressed.
49. There is also no dispute that the petitioner had been working in Qatar until shortly before his marriage and that he was to resume to his employment maybe sometime after the marriage.
50. The respondent stated several times that they had agreed to establish their matrimonial home in Lamu where the petitioner was constructing a house and that the petitioner himself had been sending her photos on the status of that house.
51. Though the respondent did not produce any evidence to that, like printout of the photos which the petitioner had sent her, the petitioner never disputed that statement.
52. To respond to the above, it is necessary to refer to the provisions of Islamic law on residence/accommodation of the wife.
53. The Qur'aan stipulates on the residence/accommodation of divorced wives by prescribing upon husbands by stating that: "Accommodate them (divorcées) where you yourselves dwell according to your ability.....". 65: 6
54. Ibn Qudaamah in explaining the above verse states that: "It is her right to be provided with accommodation as stated by Allah (Accommodate them(divorcée) where you yourselves dwell according to your ability.....)". He further stated that: "If accommodation is a right to a divorced woman during the waiting period, then it is far more a right to the one who is still in her matrimonial relationship." Al Mughniy, 8:200 and 9:237.
55. The petitioner has claimed that the respondent left without his permission and as a result, she is a disobedient wife but the question which arises is, from where did the respondent leave without the petitioner's permission? Is it from their matrimonial home or from the petitioner's parents? If the petitioner left her matrimonial home without a valid reason, then she may be regarded as disobedient.
56. But assuming that the petitioner regards his parents' house as the matrimonial house then respondent refused to stay there and instead requested for a separate house because of being uncomfortable living there as raised in her case, in that case, Muslim Jurists have opined that the husband shall provide a separate accommodation for the wife.



57. They state that: Accommodating the two parents and the wife together in one house is not allowed (and other relatives). So, the wife can decline to be accommodated with anyone of the two because for her residing in a separate house is fair to herself and her house is her right and no one is to coerce her to that. And this is the position of the majority of jurists among the Hanafis, Shaafis and Hanbalis. *Almawsuu'atu Alfiqhiyyatu Alkuwaitiyyah*, 25:109
58. They further state that: whoever has observed the problems and disputes that occur in homes between husbands and wives as a result of accommodating wives together with the husband's parents and vice versa, then they will understand the wisdom behind which the jurists opined that it is a right of the wife to be accommodated in a separate house, but if she consents to living with the husbands relatives in order to be kind to her husband and honor his parents especially if they need assistance, then there is nothing wrong with that and Allah will reward her for that kindness inshaa Allah. But she must be patient and forbearing.... <https://islamqa.info/en/answers/81933>
59. The respondent raised inter alia serious allegations against the petitioner like stating that the petitioner was involved with commercial sex workers, he chews mogoka and is addicted to it.
60. The petitioner denied being involving himself with commercial sex workers nor consuming or being addicted to mogoka and as a result, it is upon the respondent to prove her claims or else the petitioner confesses which he didn't and thus the onus probandi is upon the claimant, and taking of an oath is upon the one denying.
61. As we mentioned earlier that this matter was referred to the Court Annexed Mediation to allow parties reach an agreement/settlement but that did not happen as a result of one of the parties.
62. In the report by the mediator dated 3rd October 2024 who this matter was assigned to states and I quote: "The challenges if any: - The defendant stated he doesn't want any more communication from me or the defendants. I have on several occasions tried to call him but he hasn't been responsive neither through text message nor phone calls."
63. The above statement by the mediator is not precise especially on who between the two parties abandoned the process as she mentioned the defendant twice.
64. Before the matter came for hearing, during a mention, the petitioner confessed that he had told the mediator not to try to communicate with him at all.
65. During cross examination of the petitioner by the respondent, it appeared that the petitioner never tried to communicate to the respondent alleging that the respondent blocked his phone number making it impossible to communicate with her.
66. The petitioner when asked if he had ever tried other means apart from phone calls and text messages, like WhatsApp for example to reach the respondent, he stated that he has no time with WhatsApp.
67. The parties herein being Muslims should have first at least utilized the alternative dispute resolution techniques stipulated by Islamic Law in dealing and handling of disputes before utilizing the court process and among that is the concept of Sulhu (conciliation). The Qur'aan states: "And if a woman fears from her husband injustice or desertion, then there is no wrong in both of them to make conciliation, for conciliation is better." 3:128
68. So, the petitioner wants the respondent to return back to him but as not shown any effort and alternative means he has utilized to convince her return. He has not tried to engaged the respondent herself nor local elders and religious leaders to assist in settling down the disputes. The Court further referred the matter to Court Annexed Mediation but it is the same petitioner who absconded from the



process. If the process was not convenient for him, he should have given the alternative and the Court would have considered.

69. This also involves the respondent who after being served with court documents, she should have first engaged the petitioner directly or via other means but instead, she filed a response in which she tried to demean the character of the petitioner whom she wants him to provide for her needs, just like the petitioner tried the same against her and at the same time she wants her to return back to him.
70. It would have been wise for petitioner and the respondent to first try to resolve and sort out their issues before engaging other alternatives like court processes. In fact, the petitioner filed his petition only three days after the respondent had travelled while the respondent's documents filed in response to the petitioner are dated 5th July 2024 as if immediately after being served, she started preparing to deal with the petition before court.
71. I find the petition to be unmerited and as a result, it is hereby dismissed and each party shall bear its own costs.

DATED, SIGNED AND DELIVERED THIS 18TH DECEMBER 2024

IDRIS N. NYABOGA

KADHI

Before:

Court Assistant

Petitioner

Respondent

