



AHO v MMA (Divorce Cause E001 of 2023) [2023] KEKC 13 (KLR) (30 May 2023) (Judgment)

Neutral citation: [2023] KEKC 13 (KLR)

**REPUBLIC OF KENYA
IN THE KADHIS COURT AT BUSIA
DIVORCE CAUSE E001 OF 2023
IN NYABOGA, SRK
MAY 30, 2023**

BETWEEN

AHO PETITIONER

AND

MMA RESPONDENT

JUDGMENT

1. Aggrieved for many years by the conduct of the respondent, the petitioner, one AHO made a decision to approach this Court and pray against the respondent, one MMA for orders:
 - a. That the marriage between the petitioner and the respondent be dissolved.
 - b. That custody of children be granted to the petitioner.
 - c. Cost of the suit.
 - d. Any relief the Honorable Court may deem fit and just.
2. The petition as well as summons to appear were both duly served upon the respondent vide affidavit of service filed on May 16, 2023. No entry of appearance was made by the respondent himself or by an advocate on his behalf within the prescribed period.
3. The fact that the respondent failing to reply to the petition nor appear to defend himself after being duly served does not bar the case from proceeding because justice delayed is justice denied. Thus the matter came up for hearing on May 24, 2023 and only the Petitioner was present before court and so the matter proceeded ex parte.
4. The petitioner testified that she celebrated her marriage with the respondent on March 10, 2006 in Busia in the Republic of Kenya.
5. She stated that the marriage was conducted in according to the Islamic traditions. No certificate was issued.



6. The petitioner further stated that her marriage to the respondent has been blessed with two issues namely:
 - a. HM (boy) DOB- 29/8/2006 and
 - b. NS (girl) DOB- 7/12/2015
 1. She states that not so long after celebrating her marriage, the respondent began consuming miraa and tobacco and as thus used to come home very late and the next day will wake up late and abuse the petitioner using indecent language (malaya, unanuka).
 2. The petitioner states that she had been raising her concerns against the respondent to the elders but was not assisted and instead was told to be patient in the marriage.
 3. She further states that after giving birth to her second child (NS), the respondent spent many days and nights indoors and as a result lost his job at Somo Transporters, a clearing and forwarding company in Busia, Kenya next to customs offices.
10. She states that after the respondent lost his employment, his conduct deteriorated and could completely not perform his duties as husband and parent i.e. he does not provide for the family, does not pay rent does not pay school fees.
11. The petitioner further testified that they were once sent away from their rental house for failing to pay monthly subscriptions.
12. The petitioner states that it was her sister-in-law who provided them with a house to stay in for free.
13. The petitioner states that several times she used to go to her mother and stay there since the respondent was not providing them and didn't care about her and the children.
14. The petitioner states that when she instituted this petition against the respondent, she shifted to her mother and left the respondent still staying in the house they had been provided with by her sister-in-law.
15. She states that she is the one who was given the house but the respondent bullies her and does not love her and the children.
16. She also states that the respondent's parents have been claiming that she is the one who bewitched the respondent and made him lazy and not able of undertaking his responsibility.
17. She further states that the respondent has denied her rights including conjugal right.
18. The petitioner prays from the Honourable Court for an order for divorce from the respondent. She also prays for orders to collect here belongings and those of the children from the house where the respondent is still residing. The petitioner further prays for custody of the two children since the respondent is not fit to be granted custody.



Determination

19. Marriage is an institution which apart from its objective of preserving the human species in according to the heavenly laws, couples also obtain tranquillity, affection and compassion from marriage. God Almighty states:

And among His signs is that He created for you spouses from among yourselves so that you may find comfort in them. And He has placed between you compassion and mercy. Surely in these are signs for people who reflect. *Qur'aan*, 30:21.

20. In the case where some or all of these objectives are not met and instead either both the husband and wife or one of them finds harm in marriage, the law has stipulated ways of at least reducing or completely getting out of the harm and among them divorce which is has to be last option.

21. The petitioner has expressed that she has tried to resolve the challenges in her marriage but has failed as a result of the respondent not showing good-will but instead undermining her which led to her filing this petition.

22. I state that the petitioner has proved her case according to the required standard and thus give the following orders:

- a. That the petitioner is hereby divorced from the respondent.
- b. That the petitioner is hereby granted order to collect all her belongings and the belongings of the two children from the respondent.
- c. That the petitioner is hereby granted physical custody of the two children.
- d. That there is no order as to cost.

DATED, SIGNED AND DELIVERED IN BUSIA (K) THIS 30TH DAY OF MAY, 2023.

HON. IDRIS N. NYABOGA

SENIOR RESIDENT KADHI

In the presence of:

Court Assistant: Hassan

Petitioner: AHO

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