



REPUBLIC OF KENYA



DQG v HBH (Divorce Cause E005 of 2023) [2023] KEKC 23 (KLR) (19 July 2023) (Judgment)

Neutral citation: [2023] KEKC 23 (KLR)

**REPUBLIC OF KENYA
IN THE KADHIS COURT AT MOYALE**

DIVORCE CAUSE E005 OF 2023

G ADAN, PK

JULY 19, 2023

BETWEEN

DQG PETITIONER

AND

HBH RESPONDENT

JUDGMENT

1. The Petitioner prays for dissolution of marriage, custody of two issues, and further consequential orders may lawfully grant.
2. The parties in this case have married on 20th August 2017, in accordance to Islamic shariah at a dowry of kshs 20,000 which was fully paid. One child blessed out of their union (AH).
3. The petitioner premised her relief on desertion, lack of communication, and none provision of maintenance on the part of the respondent. She further claims that he neglected her and failed to respect marriage institution thus exposing her to mental cruelty. She states to have used all available ways to resolved their dispute but all in vain and now she avers to have reach a point of no return. Hence, she moved this court to settle this matter once and for all.
4. The respondent denies entire contents of petition as if the same were set out verbatim and transversed seriatim and seeks the averments thereof be put to strict proof. He further denies in its entirety, the allegation over the respondent never made any effort to return the petitioner back after she left.
5. Instead, he blames the respondent for leaving the matrimonial home under the influence and directions of her mother and has never returned since then and he accused her of been guilty of desertion and blocked her from accessing his child. He also denies allegation of not providing maintenance, and any particularls of cruelty, and accused her of completely became incommunicado and harsh, despite he said to have made every effort to provide for them, by sending money for the same on monthly through another person who can attest for him to the veracity of his statements.



6. He also denies other allegation about failing to his responsibility as father and husband, being not shown respect to the institution of the marriage, and he states, that his action has not become unbearable to the petitioner as alleged. He additionally, avers that he made efforts to rescue their marriage but the petitioner became harsh on him.
7. He therefore, blame the petitioner for been author of her misfortunes having created a condition warranting such a divorce but has come with unclean hands asking for undeserved shortcuts. He also blaming her of non-disclosure of material facts relating the marriage pertaining to the expenses he incurred while seeking for reconciliation through her parents, village elders, transportation and other related expenses.
8. However, he concurred with the petitioner's averments that there is no marriage left between the parties as the same has irretrievably broken down, all efforts having been exhausted to rescue the same.
9. As an option, he mentioned Khul'a in his defense, as a wife's right to exit the marriage contract quoting, the verse of Quran 2:229, providing that option of wife's right under Islamic shariah law, also mentioning another case of Thabit bin Qays whom his wife appeared before the Prophet (SAW), which then was settled through Khul'ah, the wife got divorced after she returned back the dowry given to her for the marriage.
10. On contrarily, he prays for dismissal of petition with cost, custody of child, joint maintenance, and limited access be granted to the petitioner.
11. Considering, the petition and subsequent defense, it is clear that the petitioner and the respondent had misunderstanding over the matters relating to their marriage. Thereof, the petitioner left the matrimonial home at Eldoret and stayed at her mother's home in Moyale. They separated and stayed apart for long. it is also evident that both parties agreed that their marriage has broken down irretrievably. They both stated that they made all the efforts to rescue their marriage and exhausted. To a point, even the respondent himself over the same, mentioned the option of Khul'a if the wife wants to exit the marriage, despite then he later sought for contrarily.
12. Now the questions for determination in this matter are: what is the cause of marital discord between the petitioner and the respondent? whether the petitioner deserted or the respondent? Whether petitioner left the matrimonial home with the approval of the respondent? Whether the respondent failed in his responsibility of being a father and a husband? Whether to dissolved the marriage?
13. The matter went on hearing virtually, where both parties participated and gave their testimony. They have not presented other witnesses' testimony apart from their own. During the hearing they both testified on oath.
14. The petitioner averred that she left the matrimony home with the consent of the respondent due to the problem she was facing from the respondent. She falls sick and most of the time the respondent was away from home, as he drives a track between Kisumu and Eldoret. She said whenever he comes she is on the bed cannot afford to cook for him and he also cannot understand her problem. She testified was then sent home to her mother after the respondent was convinced to send her so as her problem may be found out by her mother. She reached home at Moyale and her problem was known as she was two months pregnant. She stayed there until she said to deliver a child (a son) but blame the respondent for never communicated and never sent any provision as his responsibility, he never came Moyale to reconcile but sent some people who never came to her family.
15. On the other side, the respondent admits to send her to her mother after having discussion with his other relatives, so as her mother will find out her problem. He avers that since then she never returned



- back. He states to have tried all the available means to reconcile but he did not come himself, as he said to have sent his other relatives to represent him. He said that he was told to ask for forgiveness, which he failed to understand for what wrong he did, he should ask for forgiveness. He states to have stayed apart but avers to send money for maintenance through some one who can testify to its accuracy. He admits to have been separated for now six years, he has not married another wife and she was not divorced.
16. He finally agreed to divorce her without returning back the dowry he paid for the marriage, and she also agreed the same, as that was the main prayer she was eagerly expecting. She did not raise further question except the issue of child's maintenance, which the respondent agreed to provide according his means and the needs of the child. Alternatively, he asked for access of the said child, where she promise to give unlimited access of the same to him.
 17. Now the other questions for determination are nonetheless be standing for answers. It has been overtaken by the divorce issued by the respondent without mentioning how many talaas he issues, but the court ruled that it has to be counted as one talaqa within which they may resume their relationship within 3 months' period, or may do so on a new marriage contract after elapse of the said period, if at all she has not been married by any other person.
 18. Over the other issue of child's custody, the court finds the child had been with petitioner now for five years, and no further incidents of mishandling of the child raised, considering the best interest of the child, as provided in the *constitution* and shariah law, this court finds the mother been in most cases and in this one is the best place for the said child. The respondent also has not raised further claims over the same. I do grant the petitioner to have the custody of the said child, while the respondent shall have unlimited access to the same, but provide maintenance at rate of Ksh 5000 per month for upkeep of the child, and should pay school fees, medical expenses whenever required.
 19. For registration of divorce certificate and issuance of divorce certificate parties to apply for it.
Orders accordingly.

DATED AND DELIVERED AT MOYALE ON THIS 19TH DAY OF JULY 2023,

BY HON. GALGALO ADAN

In open court and in the presence of both parties:

Darmi Qalicha Galgalo – the petitioner (physically)

Hassan Gabrel Haile – the respondent (virtually)

and

Court assistant – Mr Umuro Isacko

