



**DAA v MSR (Divorce Cause E057 of 2022) [2022] KEKC 11 (KLR) (30 June 2022) (Judgment)**

Neutral citation: [2022] KEKC 11 (KLR)

**REPUBLIC OF KENYA  
IN THE KADHI'S COURT AT UPPER HILL (NAIROBI MILIMANI LAW COURTS)**

**DIVORCE CAUSE E057 OF 2022**

**AH ATHMAN, SPK**

**JUNE 30, 2022**

**BETWEEN**

**DAA ..... PETITIONER**

**AND**

**MSR ..... RESPONDENT**

**JUDGMENT**

1. The plaintiff prays for dissolution of marriage and issuance of divorce certificate.
2. The petitioner claimed the respondent deserted his family and abdicated his marital responsibilities.
3. The defendant was served with the plaint summons to appear and reply. He failed to enter appearance or file defence. The matter proceeded ex parte to formal proof hearing under rule 68(1) (b) of the Kadhi's Court (procedure & practice) rules\_2020.
4. The petitioner is a Kenyan, while the respondent is a UK Citizen. Both are of Somali Origin. They were introduced to each other by a friend and communicated through phone. The marriage was done under Islamic law in June, 2019 through proxy while the respondent was still in the United Kingdom. Five months after the marriage the respondent came to Kenya and consummated the marriage. They lived in a hotel for about eleven months till December 2020 when he returned to the UK He has neither been sending his wife her maintenance nor communicate with her during this period. Despite efforts at reconciliation, the dispute was not resolved. The petitioner was compelled to come to court. The petitioner is a (26) year old lady and the respondent in his thirties.
5. The issues for determination in this matter are whether or not the petitioner is entitled to divorce. The petitioner abandoned the prayer for children maintenance at trial.
6. The petitioner reiterated under oath, that the respondent cheated her into a vocational marriage. She contended he used her to satisfy his bestial needs as he declined to get them an apartment to live in



and instead lived in a hotel and has not been providing her maintenance contrary to law since he left almost two years now. The

7. The pleadings have not been challenged or controverted. Her case was supported by the evidence of PW1. The petitioner has successfully discharged her evidentiary burden on the required standard.

8. Marriage as an institution, is a solemn and serious undertaking, a sacred covenant. It is both a religious obligation and civil contract. It is aimed to foster peace, love and compassion and not mere satisfaction of sexual needs of men and women. It is envisaged to last the lifetime of the spouses and should not be a limited to time and place. Section 211 of the Kadhi's courts bench book (2020) aptly captures these virtues. It states:

‘Marriage in Islam is a form of Ibadah (worship) clothed in the legal form of a contract regulating the relationship between spouses and its continuance is dependent upon the observation of rights and duties. The prophet (peace of Allah be upon Him) said ‘Marriage is my sunnah, whoever keeps away from it is not from me.’

9. The key objectives of marriage of love, affection, tranquility and mercy contemplated under Q.30.21 cannot be envisaged where the husband deserts his wife for long periods without conjugal rights and maintenance. Provision of accommodation and Sustenance of wives by their husband is a fundamental marital right under the law. Muhammad Ibn Ismail Al Sana'ny, in Subul al Salam vol 3 at pp 220 reported tradition by Imams Ahmad, Abu Daud, Nasaiy. It states:

‘Muawiyya al Qushairiy reported that his father asked the Prophet: “what are the rights of our wives on their husbands?” The Prophet (peace and blessings be upon him) said: “Feed her when you eat and clothe her when you clothe yourself, do not beat her face and do not migrate (stay away from her) except (if it be necessary) in the (same) house’.

10. Lack of conjugal rights, love, affection and maintenance puts the rights, interests and welfare of the young wife to eminent danger and palpable harm. Rule 5 (2) (d) the Kadhi's Court (practice & procedure) rules\_ 2020 ‘injury is removed’ is one of the overriding objectives of the rules. This juristic maxim is a provision of section 20 of the Majalla, the Ottoman Courts manual founded on the hadith narrated by (May Allah be pleased with him) and reported by Imams Malik, Al Muwatta' vol 2 pp 352), Ahmad, Al Musnad pp 239 hadith No 6865), Baihaki, Sunanul Kubra vol. 6 pp 257 hadith No 1909, that the Prophet (may Allah's peace and blessings be upon him) said:

“initiating or reciprocating harm is prohibited (in Islam).

11. There appears a worrying trend of what can only be termed as vacation marriages, where prospective husbands from foreign countries come to the Kenya to enter marriage contract for the period of their long vacation and leave the young wives hanging, as it were. The only aim seems to having the exclusive sexual satisfaction of young ladies at no cost, as the dowry in most communities is often deferred. They return to their countries to move on in their lives and leave the desperate young ladies in psychological and economic turmoil. Such marriages are contrary to the objectives of the sacred institution and should be fought according to the law. Such persons should be blacklisted and reported to the authorities in their countries of origin.

12. The petitioner is a young lady. Her fundamental rights in marriage have been infringed. She did not even receive her dowry contrary to law. The petition is merited. Consequently, the prayer for divorce is hereby granted. The party's marriage be and is hereby dissolved with effect from June 30, 2022 corresponding with 1<sup>st</sup> Dhul Hajj, 1443 AH Divorce certificate to issue.



Orders accordingly.

**DATED, SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI ON 30<sup>TH</sup> JUNE, 2022**

**HON. ABDULHALIM H. ATHMAN**

**SENIOR PRINCIPAL KADHI**

**In the presence of**

**Mr. Judith, Court assistant**

