



REPUBLIC OF KENYA



**KENYA LAW**  
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**M I M (Miscellaneous Cause E268 of 2022)  
[2022] KEKC 6 (KLR) (Family) (27 June 2022) (Ruling)**

Neutral citation: [2022] KEKC 6 (KLR)

**REPUBLIC OF KENYA  
IN THE KADHIS COURT AT NAIROBI (MILIMANI COMMERCIAL COURT)  
FAMILY  
MISCELLANEOUS CAUSE E268 OF 2022  
AH ATHMAN, PK  
JUNE 27, 2022**

**IN THE MATTER OF**

**M I M ..... APPLICANT**

**The presence of a bride in a wedding ceremony was not a requirement for the validity of a marriage under Islamic law.**

*In an advisory opinion in which the Kadhi's Court was requested to answer whether a marriage celebrated via a proxy was legal and valid under Islamic law; the court answered that a marriage in the presence of the groom, bride's guardian and witnesses, but in the absence of the bride satisfied all the requirements of a valid marriage under Islamic law provided the bride gave her free consent.*

Reported by John Ribia

***Family Law** – marriage – marriage under Islamic law – requirements of marriage under Islamic law – attendance of the parties in a wedding ceremony - whether a marriage celebrated via a proxy was legal and valid under Islamic law - whether the presence of a bride in the wedding ceremony was requirement in a valid marriage under Islamic law - whether parties to a marriage may attend the wedding virtually under Islamic law - Kadhi's Court Bench Book (2020), section 240.*

**Brief facts**

The applicant, a Kenyan, married a Swedish national residing and working for gain in the United Kingdom on October 21, 2020. The marriage was done in Kenya while the bride was physically in the United Kingdom. The bride and her *walii* (guardian) gave their consent to the marriage. Their marriage certificate was registered and issued by the Kadhi's Court at Nairobi. On presentation of the certificate to the High Commission of the United Kingdom, questions were raised on how the marriage could have been celebrated while the bride was not present at the ceremony. He was requested to provide formal legal position on the issue, hence the application. The applicant's miscellaneous application dated June 24, 2022 sought an advisory opinion of Islamic law on validity and legality of a marriage celebrated through proxy.

**Issues**

- i. Whether a marriage celebrated *via* a proxy was legal and valid under Islamic law.



- ii. Whether the presence of a bride in a wedding ceremony was a requirement in a valid marriage under Islamic law.
- iii. Whether parties to a marriage could attend the wedding virtually under Islamic law.

#### **Held**

1. Kadhi's courts in Kenya were established under the Constitution of Kenya, 2010. Article 170(5) conferred the Kadhi's Court with jurisdiction to determine questions of Muslim law relating to personal status, marriage, divorce or inheritance in proceedings in which all parties professed the Muslim religion and submitted to the jurisdiction of the Kadhi's courts.
2. A valid marriage under Islamic law had to fulfil five key requirements: consent of bride and her *waliy*, husband and wife free from legal impediments, offer and acceptance, witnesses and dowry.
3. Strictly under Islamic law, the presence of the bride, though highly encouraged, was not a requirement related to the validity of a marriage provided her consent had been authenticated. The *waliy* or guardian had the original *locus standi* to solemnize the marriage of his daughter, granddaughter or niece as the case may be. He could however, delegate that power to a Sheikh, Muslim Marriage officer or Kadhi. Section 240 of the Kadhi's Court Bench Book (2020) provided that the guardian had the authority to solemnize the marriage. However, he could delegate the same to a Kadhi or a Muslim Marriage officer to officiate the marriage ceremony.
4. A marriage in the presence of the groom, bride's guardian and witnesses, but in the absence of the bride satisfied all the requirements of a valid marriage under Islamic law provided the bride gave her free consent. The presence of the groom was however, mandatory for validity of a Muslim marriage but his presence could be expendable with his appointment of an attorney or proxy to represent him at the marriage ceremony.
5. Islamic law allowed representation in transactions generally and in marriage contracts specifically.
6. One of the key strategies adopted by the judiciary to enhance access to justice was the harnessing technology solutions. Those included but were not limited to e-filing and virtual courts. Alternative to proxy marriage through, the husband could also participate in the marriage virtually through video platforms. Marriage so celebrated was also deemed to have satisfied the requirements of Islamic laws of marriage. Marriage through proxy were valid and legal under Islamic law.

*Advisory opinion issued.*

#### **Citations**

#### **Statutes**

1. Constitution of Kenya, 2010 — Article 169; Article 170(5) — Interpreted

#### **Texts**

1. Al Khatib A. S., Al Mughni al Muhtaj (Al Babi al Halabi edition pg 139)
2. Juzzy I., (2010), Al-Qawanin al Fiqhiyah (pg 329)

#### **Advocates**

None mentioned

## **RULING**

1. The applicant's miscellaneous application dated June 24, 2022 seek an advisory opinion of Islamic law on validity and legality of a marriage celebrated through proxy.

#### **Background**

2. The applicant, a Kenyan of married SFY, a Swedish national residing and working for gain in the United Kingdom on October 21, 2020. The marriage was done in Kenya while the bride was physically in



the United Kingdom. The bride and her wali or guardian gave their consent to the marriage. Their marriage certificate was registered and issued by the Kadhi's Court at Nairobi. On presentation of the certificate to the High Commission of the United Kingdom, questions were raised on how the marriage could have been celebrated while the bride was not present at the ceremony. He was requested to provide formal legal position on the issue, hence the application.

### **Jurisdiction.**

3. Kadhi's courts in Kenya are established under article 169 of the [Constitution of Kenya \(2010\)](#). Article 170 (5) confers it with jurisdiction to 'determine questions of Muslim law relating to personal status, marriage, divorce or inheritance in proceedings in which all parties profess the Muslim religion and submit to the jurisdiction of the Kadhi's Courts.

### **Requirements of a Muslim Marriage**

4. A valid marriage under Islamic law must fulfil five key requirements: consent of bride and her wali, husband and wife free from legal impediments, offer and acceptance, witnesses and dowry. Al Sharbini Al Khatib in his [Al Mugbni al Muhtaj](#), a commentary on Imam Nawawi's al Minhaj at pg. 139 [Al Babi al Halabi edition] states:

There are five pillars of marriage: the offer and acceptance of marriage, husband, wife [free from any impediments to marriage], waliyy [legal guardian] and [at least] two witnesses.

5. Ibn Juzzy in his [Al-Qawanin al Fiqhiyah](#) (2010), 329, Ministry of endowments and Islamic Affairs Kuwait, concurs with other scholars on the requisites of an Islamic marriage. He states:

'A legal marriage under Islamic law must fulfil five requirements: Husband, wife, waliy [legal guardian], offer and acceptance and dowry.'

6. Strictly under Islamic law, the presence of the bride, though highly encouraged, is not a requirement to the validity of a marriage provided her consent has been authenticated. The wali or guardian has the original locus standi to solemnize the marriage of his daughter, granddaughter or niece as the case may be. He may however, delegate this power to a Sheikh, Muslim Marriage officer or Kadhi. Section 240 of the Kadhi's Court Bench Book (2020) provide:

'The guardian has the authority to solemnize the marriage. However, he may delegate the same to a Kadhi or a Muslim Marriage officer to officiate the marriage ceremony.'

7. A marriage in the presence of the groom, bride's guardian and witnesses, but in the absence of the bride satisfies all the requirements of a valid marriage under Islamic law provided the bride gave her free consent. The presence of the groom is however, mandatory for validity of a Muslim marriage but his presence may be expendable with his appointment of an attorney or proxy to represent him at the marriage ceremony.

8. Islamic law allows representation in transactions generally and in marriage contracts specifically. The Qur'an provides for permissibility of representation at Nisa' 4: 35 and Al Kahf 15:19.

'and if you fear breach between them twain (the man and the wife) appoint an arbiter from his folk and her folk, if they desire amendment Allah will make them of one mind. Lo! Allah is ever Knower, Aware.'



"So, send one of you, with this silver coin of yours to the town and let him find out which is the good lawful food and bring some of that to you..." Al Kahf 15:19

9. There is recorded juristic consensus among all Muslim scholars that marriage by proxy is legal. (Ref: Takmilatul Fath el Qadir 8/4, Al Mughni 5/87, Encyclopedia of Islamic Jurisprudence, Kuwait 41/241). In emphasis of its validity, none other than the Prophet [may peace and blessings be upon him] married several of his wives through proxy. Al Baihaki (6/139), Abu Daud (2/569) and AL Nasa'iy (6/119) report that Um Habiba [ may Allah be pleased with her] was in Ethiopia where they had migrated with her husband Ibn Jahsh, when he passed away. She was married to the prophet through proxy in Ethiopia by Al Najashy, the King of Ethiopia while the prophet was in Makka.
10. Al Baihaki (4/119) reports that the prophet [may peace and blessings be upon him] appointed Umeiya al Dhumry as his proxy in his marriage to Umu Habiba [may Allah be pleased with her]. Al Tirmidhi (4/191) reports that the prophet [may peace and blessings be upon him] sent Abu Rafi' to accept his marriage to Maimuna.
11. One of the key strategies adopted by the judiciary to enhance access to justice is the harnessing technology solutions. These include but are not limited to e-filing and virtual courts. Alternative to proxy marriage through, the husband may also participate in the marriage virtually through video platforms. Marriage so celebrated is also deemed to have satisfied the requirements of Islamic laws of marriage.
12. Marriage through proxy are valid and legal under Islamic law and is settled practice in Kadhi's Courts in Kenya.

**DATED, SIGNED AND DELIVERED AT NAIROBI ON 27<sup>TH</sup> JUNE, 2022.**

**HON. ABDULHALIM H. ATHMAN**

**PRINCIPAL KADHI**

In the presence of

Ms. Judith Ndori, Court assistant

Applicant.

