



REPUBLIC OF KENYA



KENYA LAW
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**HHK v CGE & another (Matrimonial Cause E005 of 2022)
[2022] KEKC 166 (KLR) (4 October 2022) (Judgment)**

Neutral citation: [2022] KEKC 166 (KLR)

**REPUBLIC OF KENYA
IN THE KADHIS COURT AT ISIOLO
MATRIMONIAL CAUSE E005 OF 2022
IA HUSSEIN, PK
OCTOBER 4, 2022**

BETWEEN

HHK PETITIONER

AND

CGE 1ST RESPONDENT

ST 2ND RESPONDENT

JUDGMENT

1. Before this court is the petition dated February 17, 2022 by which the petitioner sought for orders that: -
 - a. The 1st respondent be ordered to return to the matrimonial home.
 - b. The 2nd respondent be ordered to respect the Petitioner's marriage.
 - c. The 1st respondent's maternal uncle be restrained from meddling with petitioner's family affairs.
 - d. The 1st respondent be ordered to be respectful and submissive.
 - e. Any other relief this honourable court deems fit to grant.
2. The respondent filed an answer to the petition dated September 7, 2022 in which she sought the dismissal of the petitioner's case
3. The matter proceeded by way of oral evidence. The petitioner told the court that he and the 1st respondent got married to each other sometime in the year 2020 under Islamic law at a ceremony solemnized at Isiolo with the unpaid dowry of Kshs 25,000/-. The petitioner stated that their union was blessed with one (1) child age 6 months. and that the 2nd respondent, an ex-suitor of the 1st respondent has been intermeddling in their marriage and that sometime on september 2022 the 1st



respondent deserted the matrimonial home with the help of her maternal uncle HF. On the premises, he prays for his petition to be allowed.

4. The 1st respondent together with the other two witnesses confirmed that she got married to the petitioner in the year 2020. She confirmed that their union was blessed with one (1) child.
5. The 1st respondent stated that she was divorced thrice orally by the petitioner in presence of her uncle HF and petitioner's clan elder HB and that since then the petitioner has not been providing for the family save as Kshs 4,000/- he sent after her delivery. The 1st respondent maintained that there exists no marriage capable of mending.
6. The 2nd respondent testified that both parties are known to him and as an elder, he is a man of respect and has not interfered with the marriage of the parties and that he does not intend to marry the 1st respondent and that all assertion by the petitioner is ill-informed and meant to damage his reputation.
7. I have considered this petition, the answer, and, filed in reply as well as the evidence adduced by the parties. I have scrutinized into allege grounds raised by the petitioner as contained in his pleadings. The issue that falls under my consideration is whether there is a valid marriage.
8. Marriage is often described as one of the basic civil rights of a man/woman, which is voluntarily undertaken by the parties in public in a formal way, and once concluded, recognizes the parties as husband and wife. Three elements of marriage are (1) agreement to be married (2) living together as husband and wife, and (3) holding out to the public that they are married. Sharing a common household and duty to live together form part of the 'consortium omnis vitae' which obliges spouses to live together, afford each other reasonable marital privileges and rights and be honest and faithful to each other.
9. The petitioner in her evidence adhered to the averments contained in his pleadings. The petitioner alleged that the marriage is still valid and the 1st respondent should be forced to rejoin the company of the petitioner at their matrimonial home further the 2nd respondent and the 1st respondent's family should be restrained from interfering with their marriage.
10. On the contrary the respondent refuted the allegation raised by the petitioner maintaining that the parties are incompatible mainly due to the petitioner's snapping of marital ties at his will before the RW2 and RW3 and as such orders sought by the petitioner are unmaintainable under the law.
11. A party to the dispute has to establish his case by producing unflinching evidence in support of his pleadings as elucidated in rule 123 of the *Kadhis Courts Rules*¹, 2020. The question that needs anxious consideration is whether the petitioner has proven his case to the required standard. The petitioner failed to produce any evidence supporting his version of truth save as general assertions.
12. In fact, in the face of overwhelming and impregnable testimony by the 1st respondent, it's not possible to extend any benefit of the doubt to the petitioner on the account that the parties herein are still married. Suffice it to state that the viva voce account presented by RW2 and RW3 has been in vivid detail. They did not vacillate in identifying the relationship between the parties.
13. The petitioner further failed to substantiate the imputation of the alienation of affection against the 2nd respondent. His unsubstantiated allegations amount to the character assassination of the 2nd Respondent.

¹ (1) *The* burden of proof of any fact rests with the claimant (al mudda'i) and the person who denies or disputes a fact (al Mudda'a alaih) takes the oath. (2) Whoever desires any court to give judgment as to any legal right or liability which is dependent on the existence of facts which he or she asserts must prove those facts.



14. In this case, the insatiable urge for revenge and bitterness of the petitioner had forced the innocent parties to be dragged into this case. The petitioner's turpitude and intemperate conduct cannot be considered part of normal human life. Therefore, I have no difficulty in holding that the court of law does not deal with the currency of revenge and bitterness against innocent parties.

Disposition and orders

15. On the premises, I make the following orders: -
- I. That the petitioner's case is hereby dismissed with cost.

DATED AND DELIVERED AT ISIOLO THIS 4TH DAY OF OCTOBER 2022.

AJ Ishaq Hussein

Principal Kadhi

Mr. Osman -C/A

