



**SSA v DMK (Divorce Cause E152 of 2022) [2022] KEKC 160 (KLR) (1 December 2022) (Ruling)**

Neutral citation: [2022] KEKC 160 (KLR)

**REPUBLIC OF KENYA**  
**IN THE KADHI'S COURT AT UPPER HILL (NAIROBI MILIMANI LAW COURTS)**  
**DIVORCE CAUSE E152 OF 2022**  
**AH ATHMAN, SPK**  
**DECEMBER 1, 2022**

**BETWEEN**

**SSA ..... PETITIONER**

**AND**

**DMK ..... RESPONDENT**

**RULING**

1. The parties were married under Islamic law in 2017 and divorce on September 30, 2021 through Kadhis' Court Divorce Case No XXXX of 2021. They are blessed with one child from their legal wedlock YKM a son aged four years old. The applicant has another child from another relationship.
2. The respondent's notice motion dated May 9, 2022 seek orders inter-alia for:
  - i. spent
  - ii. That the honourable court be pleased to issue restriction orders against the respondent from hovering around where she resides and works
  - iii. That the honourable court be pleased to issue orders compelling the respondent to pay for destroying the applicant's iphone 11 promax valued at KES 155,000.00
  - iv. That the honourable court be pleased to issue an order directing the police officers at Villa Police station to enforce the said order.
3. The applicant deposed that the respondent is violent and hovers around everywhere she stays, harassing and threatening her life, forcing her to move from house to house for her safety. She averred that he framed her with authorities on drug trafficking allegations and his actions have caused her anxiety and depression and loss of employment.
4. The respondent opposed the application by way of a 27- paragraph replying affidavit dated June 3, 2022. He deposed that the application is filled with misleading averments aimed at maligning his



- character and image. He denied knowledge of the divorce but admitted the marriage has irretrievably broken down and that he has kept away from her since 2021 save for requests at child access. He denies destroying the applicant's phone and stated that no material evidence was attached to prove the claim. On his part he claimed the applicant is drug peddler and exposed the children to drugs. He reiterated that he has no intention to be in her life save for the welfare of the child. He proposed a child access schedule in alternate weekends and school holidays and urged the court to make directions on the issue.
5. The applicant filed a further affidavit dated May 21, 2022 to respond to the claims in the respondent's affidavit. She averred that the respondent had admitted to have destroyed her phone and undertook to replace it. He denied that the alleged exhibits prove the claim she was a drug peddler and that as a result of his harassment she was sacked but was reinstated but at a lower salary.
  6. The applicant filed affidavits of SA and JO to support her claims. On his part the respondent filed a further affidavit in reply thereto. The application was disposed by way of written submissions.
  7. Mr Agwell for the applicant submitted that the application is filed under the overriding objectives of this court to protect the applicant from the respondent.
  8. Mr Kamau for the respondent argued there is no proper suit to support the application. He further argued that no evidence of probative value was filed to support the claims of destroying the phone.
  9. The parties, now divorced still have and face challenges. Rule 20 of the [KCPPR](#) provide that the court shall be moved by way of petition or notice of motion. The court's duty under rule 5 of the KCPPR is to resolve disputes within its jurisdiction in accordance to law. Ideally the application should have been filed in the main divorce petition. However, considering there exist a decided divorce matter between the parties and the applicant had initiated the miscellaneous cause as unrepresented, the fundamental and constitutional right to access to justice demand that parties shall not be denied same merely on account of form or technicalities. The mistake is not fatal so long as both parties are given equal opportunity to canvass their cases.
  10. The issues for determination in this application is whether or not the prayers sought can be granted.
  11. It is trite law that the claimant has the burden to prove his or her claim. It is the provision of rule 123 (2) KCPPR based on Q 27 64, Q 2 282 and authentic hadiths. The affidavit evidence that the respondent destroyed the applicant's phone is insufficient to sustain the claim. It is hereby dismissed.
  12. The discord and hatred between the parties is palpable from their depositions. It is not strange that their marriage broke down. The accusations and counter accusations while not supporting either parties' claims reinforce the mistrust between them. If not checked it could lead to dangerous consequences. It is noteworthy that the respondent deposed that he has been keeping away from the applicant and has moved on with his life. It denotes his lack of involvement in her life. The orders sought would thus not in any way prejudice him. Consequently, we order and direct that the respondent is restrained from lingering around the applicant's place of work and/or residence save as strictly necessary for the access of the parties' child pursuant to directions of the court in KCDC XXXX of 2021.

Each party to bear its own costs.

Orders accordingly.

**DATED, SIGNED AND DELIVERED VIRTUALLY ON 1<sup>ST</sup> DECEMBER, 2022**

**HON ABDULHALIM H ATHMAN**

**SENIOR PRINCIPAL KADHI**

**In the presence of**



**Mr Suleiman A Mohamed, Court assistant**

**Mr Agwell for the applicant**

**Mr Kamau for the respondent**

