



REPUBLIC OF KENYA

IN THE KADHI'S COURT

AT VOI

DIVORCE NO. 16 OF 2020

ATA.....PETITIONER

VERSUS

IMV.....RESPONDENT

JUDGEMENT

This petition was filed on 15/9/2020 by the plaintiff who is a female adult of sound mind against the respondent who is her husband praying for dissolution of marriage even if through Faskh (abrogation) whereas the respondent is objecting the divorce and want the plaintiff to remain in marriage in his defence the respondent stated he paid Kshs. 43, 500/- as part of agreed dowry. A Kshs. 60,000/- and before the marriage he cleared the personal debt of the plaintiff amounting to Kshs. 152,000/-.

The parties who sat to try final arbitration ADR for two weeks which was fruitless. The case had to go for full hearing on 29/10/2020 where the plaintiff submitted that the respondent mistreated her by battering her once and torn her clothes. The plaintiff also said she used to see the messages of outside ladies in the respondent's phone.

The plaintiff stated that she was forced to marry the respondent after he puts conditions that she either have to marry her or pay back the amount of money 152,000/- which the respondent used to pay her personal debts or to be taken to police. The plaintiff admitted the agreed the dowry was Kshs. 47,500/-.

The plaintiff admitted that they got married on 13/3/2020 and due to mistreatment she returned back to Voi by 21/3/2020. The plaintiff stated that there was an arbitration done on 4/4/2020 where she was advised to pay back half of the dowry Kshs. 23,750/- if she doesn't want the respondent which she agreed.

The plaintiff stated that she used to be locked up in the house by the respondents and once she wanted to kill herself by a knife. The plaintiff has categorically refused to go back to the respondent and that the respondent is holding some clothes of the plaintiff.

The PW 1 who is uncle to the plaintiff testified that at the arbitration it was decided if the plaintiff doesn't want the respondent then she should return half of the dowry and the respondent to return back her clothes of which the respondent promised to do so.

When cross examined by the respondent, the PW 1 testified that the respondent did say when he came to propose the plaintiff that he was forgiven and forfeited the past amount he paid.

P/RW 2 older brother to the respondent testified that the plaintiff refused the respondent. The same night she came at Takaungu and those ladies came with waited to take her back to Voi the reason that the plaintiff was forced by the respondent to get into this marriage.

The P/RW 2 testify that they were called for arbitration at Voi where it was decided that if the plaintiff doesn't want the respondent then she should pay back half of the dowry but through at this Kadhi's Court.

When cross examined by the plaintiff the P/RW 2 testified that once when the plaintiff wanted to get out of the respondent marital house and out of scuffling the respondent torn out the plaintiff clothes (dera) and he confiscated the plaintiff phone.

On the side of the respondent he stated that they got married on 13/3/2020 at Voi with agreed dower of Kshs. 60,000/- out of which he paid Kshs. 47, 500/-. And in the same day they went to Takanigu Kalifi there started problem where the ladies who came with the plaintiff wanted to return back to Voi with the plaintiff.

The respondent stated that the plaintiff had only conversed in those phone of which he decided to confiscate it. the respondent admitted that

there were misunderstanding between them to an extent where the respondent wanted to commit a suicide where he had to take her back to Voi. On 8/4/2020 there was an arbitration among elders but it was decided that they should come to court. The respondent prayed to the court to get back her wife however, he will adhere to the court decision.

The respondent stated that before he got married by the plaintiff he cleared her loan of women group and dowry the proposed he paid bride price of Kshs. 70,000/- and added Kshs. 50,000/- a total of Kshs. 120,000/- beside of the agreed dower of Kshs. 60,000/-.

The RW 1 who was the teacher of the respondent he testified that he was involved from the proposal of this marriage, but within first week of marriage there was a problem between them where the respondent had to take the plaintiff back to Voi.

Then PW 1 testified that he attended the arbitration sitting at Voi where the plaintiff refused the respondent who wanted her back but no solution was reached.

When cross examined by the plaintiff the RW 1 testified that the charcoal of the arbitration decided that the matter be taken to the court and if the plaintiff doesn't want the respondent then she should pay back the dower.

The RW 1 pray to the court as he is an Imam and a teacher to try to arbitrate to this matter among elders for the last time with 14 days of which the court gave them another chance but it was again in vain fruitless.

Therefore from the records and submission of the parties and the witnesses it is clear that the parties got married on 13/3/2020 and on the same day the plaintiff as a wife wanted to her husband at Takaungu Kilifi there started problem where the plaintiff refused the respondent and after just one week of this marriage the plaintiff was to be returned back to Voi.

The agreed dower was Kshs. 60,000/- but respondent paid Kshs. 47, 500/- a part of the bride wealth of a total of Kshs. 120,000/- and the loan clearing of Kshs. 152,000/- before marriage.

The main reason why the plaintiff refused the respondent was that she was forced into marriage out of threats from the respondent for the loan he cleared, this was the starting point for the cause of the problem. But this was not a convincing person, the plaintiff ought not to agree the marriage which she was not willing to from the first place not to come to reject the same immediately after they she contracted such marriage.

The respondent wanted the plaintiff back as his wife and he had shown that willingness from the beginning before the marriage, but up to now the plaintiff has categorically refused to continue with this marriage to an extent of even trying attempt suicide.

A lot of effort has been done to save this marriage about three arbitration was done one before institution or this case, the other two one before hearing with the third after hearing before judgement but all bear fruitless and to the end the plaintiff is still insisting divorce whereby this proves that this marriage cannot continue.

Therefore according to the Sharia when a wife demand for a divorce from the husband without a lawful or good grounds in so doing then such a wife has to buy off her freedom by paying back dower paid to her in exchange for the divorce as required by Cap 2 Sec 229 of Holy Quran and in accordance with the Muslim Laws. Even in the first arbitration the plaintiff was asked to pay half of the dower of which she agreed.

But according to this Honourable court taking into consideration of the extra cost incurred by the respondent in form of bridal wealth this honourable court has decided that the plaintiff has to pay back the full amount paid as dowry Kshs. 47,500/- in exchange to the divorce she is damaging as (Khuluu).

Therefore, after careful consideration, this honourable court decides as follows:-

1. That this marriage be dissolved through (Khulu) of paying back Kshs. 47,500/-.
2. That the respondent to give the clothes of the plaintiff back to her.
3. That the cost of this case be shared.

M.A MAHMOUD- P. KADHI

24/11/2020

Read before the parties this 24/11/2020 at 11.15 am.

M.A MAHMOUD- P. KADHI

24/11/2020

Appeal to be conducted within 20 days from today.

M.A MAHMOUD- P. KADHI

24/11/2020

Plaintiff

Your honour we pray for the copy of the judgment.

M.A MAHMOUD- P. KADHI

24/11/2020

Court

Upon the prayer of the respondent for the copy of judgement the same to be typed and furnished to the respondent on the payment of the deposit of Kshs. 300/-.

M.A MAHMOUD- P. KADHI

24/11/2020