



REPUBLIC OF KENYA

IN THE KADHI'S COURT AT MOYALE

DIVORCE CASE NO. 7 OF 2019

HSC.....PETITIONER

VERSUS-

AHG.....RESPONDENT

JUGDEMENT

1. The Petitioner in this cause is one HS. she filed her petition dated 8th Feb 2019 in this court.
2. In her petition the petitioner prays for judgment against the respondent for;
 - a) Their marriage be dissolved.
 - b) The respondent be compel to pay her remaining dowry of Ksh 10,000/=.
 - c) The respondent be compel to pay past maintenance for the period she stayed at her family.
3. This Petition was founded on the ground of negligence and cruelty.
4. When the file was called for hearing on 12th March 2019 both the petitioner and the Respondent attended the court and matter proceeded.
5. The parties herein married on 20/1/ 2018 under islamic sharia, and veracity thereof is not objected to, by both Petitioner and Respondent. Similarly it's also not in dispute that the Union was not blessed with any issue.
6. At the trial both parties testified on oath and choose to call their respective witness. The Petitioner testified that after their marriage they cohabited as husband and wife in Moyale sub county, Their marriage was not peaceful. The respondent was cruel to her and neglected his responsibility.
7. The Petitioner herein listed that she had on several occasion together with elders held a meeting to solve the matter however their attempt was rendered futile since the Respondent use abusive language and threats of violence since he is completely drunk.
8. The respondent claim that the petitioner her matrimonial home on her own but also admitted that he used to drink alcohol before her marriage and stopped after intervention by family, the respondent declares his readiness and willingness to take a step in a bid to save their marriage,
9. Having given due consideration to the submission of both petitioner and respondent, the question which therefore, fall for my consideration is:
 - (a) **Whether there is enough ground of dissolution of the said marriage.**
 - (a) (b) **Whether the Respondent has responsibilities towards the issue of the said marriage.**
10. On the first issue for consideration, that is whether there is enough ground of dissolution of the said marriage. A woman who married under Islamic Sharia be entitled to obtain a decree for the dissolution of her marriage any of the following grounds :
 - (a) **That the whereabouts of the husband have not been known for period of three or four years.**

(b) That the husband has neglected or has failed to provide for her maintenance.

(c) That the husband has failed to perform his marital obligations.

(d) That the husband has been insane for the period of two years.

(e) That the husband treat her with cruelty, that is to say

- Habitually assaults her or makes her life miserable.

Attempt to force her to lead an immoral life..

11. However, upon hearing the petitioner's submission and given due consideration to the submission she made in court, it emerges from her submission, that she lacks enough evidence and above all the petitioner's allegation against the respondent does not meet the above threshold which is grounds of dissolution of marriage.

12. The court attention was drawn to Abdulrahman's. 'The Islamic law' (1997 Reprint) pg. 168 where it is stated that; **In Islam marriage is a contract and the contract should be made to work but, not when it becomes humanly impossible to do so. It's only in such unavoidable circumstance that divorce is permitted under shariah.** It emerges from submission on record, before the court the petitioner's prays be treated as Khul (stripping off).

13. The court attention was drawn to Q2:229, where it is stated that:

“.....then if you fear that they would not be able to keep the limits, ordained by Allah then there is no sin on either of them, if she gives back,

Mahr (dower) or a part of it for her Al-khul' (divorce)....

14. The court attention was drawn also to Bukhari's, 'Sahihul – Bukhari, 'Vol.7 Hno.197 and also, As Suyuti's sinnanu-Nisaa'i vol. 8 page 5-16 also Sunnanu - abu dawud vol. 4 page 268-69 in case of **Habiba versus Thabit (R.a),**

The wife of Thabit (Habiba) came to the prophet (S.A.W) and said 'O' Messages of God. I don't hate Thabit neither because of his faith nor his nature except that I fear unbelief (If I remain with him). On that God's messengers (S.A.W) said (to her) "will you give back his orchard? She said 'Yes and she gave it back to him and He (Prophet) ordered him and so they separated.

15. In the above the prophet ordered him to divorce his wife, after she returned to him the orchards which he gave her, as a dower. But the consent of Thabit was sought after. It is my view that the petitioner simply wishes to release herself from a marriage contract.

16. And in such a case the petitioner shall ransom herself to secure a way out of marriage and will gain a total control over her own self and freedom.

17. I have also considered the fact that Divorce since it disintegrates the family union is of course a social evil in itself but it's a necessary social evil.

18. It's better to wreck the unity of the family than to wreck the future happiness of the party by bonding them to a companionship that has become odious.

The upshot of all above that I make the following order:-

1. The first prayer made by the petitioner is hereby dismissed,

but the petitioner is at liberty to relinquish her dowry to secure a way out of marriage.

2. That the respondent shall pay past maintenance to the issue of marriage and future according to his means.

3. Order as to cost each party shall bear his/her own cost.

Ordered accordingly.

N/B: Aggrieved party has a right to file an appeal within a period of 30 days.

DATED AND SIGNED AT MOYALE THIS 26TH DAY OF APRIL, 2019.

A. D. WAKO.

SENIOR RESIDENT KADHI .

MOYALE LAW COURTS