



REPUBLIC OF KENYA

IN THE KADHI'S COURT AT MOYALE

DIVORCE CAUSE NO. 11 OF 2019

AHD.....PETITIONER.

-VS-

SAG.....RESPONDENT.

JUDGMENT

1. The petitioner in this Divorce cause is one AHD (hereinafter the petitioner). She filed her petition dated 18th Mar, 2018 against one SAG (hereinafter the respondent) where she prays for;

- a) Dissolution of marriage
- b) Custody of the issues of marriage.
- c) Maintenance

2. The petition as well as notice of appearance were both served on the Respondent in court on 18th Mar, 2019.

3. No entry of appearance and filing of Answer to petition was effected within the requisite period. When the matter was called for mention the respondent again failed to appear before the court, notwithstanding his absence the court went ahead and ordered the petitioner to serve him with a notice of hearing.

4. The return of service traced on the file reveals that their area chief Mr. Ibrahim Dube Bidu had server the respondent on 26th April, 2019 , to effect that he had duly served the respondents .

5. When the file was called for hearing on 3rd May 2019 only the petitioner attended the court, the matter proceeded by way of undefended cause on the same date since the respondent once again failed to appear after being served with hearing notice.

6. The Petitioner told the Court that she is a resident of [Particulars withheld] sub location of Moyale sub county . She got married to the respondent 5 years ago under Islamic Law later resided with her husband in dabela ,their marriage was blessed with two (2) issues.

7. The petitioner from her uncontroverted testimony testified on oath that the respondent has been treating her in the manner which is not expected to be meted out from a spouse to another spouse in marriage.

8. She further testified that the respondent to maintain her and that all efforts to reconcile/redeem their marriage have been grossly and contemptuously disregarded by the respondent.

9. In the premises, the petitioner contended her marriage to the respondent has irreparably and irretrievably broken down and should be dissolved and she be granted the divorce certificate.

10. Having considered the evidence adduced before me, the evidence was not challenged . I am satisfied that the petitioner has not in any manner whatsoever contributed to the breakdown of the marriage.

11. I am also satisfied that the respondent has without a justifiable cause failed to fulfill the standard ordained by God – A duty to maintain his wife.

12. I therefore find the standard of proof in establishing the ground of divorce is a preponderance of probability and hold that the marriage

between the Petitioner and the Respondent has irretrievably broken down. The marriage, the subject matter of these proceedings is accordingly hereby dissolved.

13. Divorce Certificate shall be issued forthwith.

14. On the second prayer made by the petitioner which is past maintenance.

Grant of maintenance to wife should be perceived as a measure of social justice Chap. 65 V. 7, 6 and Chap. 2 V 233 of the Holy Qur'an is a measure of social justice and is specially enacted to protect women and children and falls within constitutional sweep of Article 19(2) of the Constitution . It is meant to achieve a social purpose. The object is to prevent vagrancy and destitution. It provides a speedy remedy for the supply of food, clothing and shelter to the deserted wife.

15. It gives effect to fundamental rights and natural duties of a man to maintain his wife, children and parents when they are unable to maintain themselves.

16. This being the position in *Shariah* law, it is the obligation of the husband to maintain his wife. This would be mandatory even in the circumstance where the husband claims not to be in a position to sustain the wife due to financial constraints as long as he is capable of earning .

17. In the premises, there being no submissions nor response from the respondent and on the evidence adduced by the petitioner, the evidence which was not challenged. I find for the petitioner. Accordingly, I make the following orders:-

i. That their marriage is hereby dissolved.

ii. That respondent is ordered to pay 20,000 ksh for dowry of petitioner.

iii. That the custody of the issues of marriage is granted to the petitioner.

iv. That the respondent shall contribute towards the upkeep of the issues of marriage according to his means.

v. No order as to cost.

Dated , Delivered and Signed at Moyale this 31st day of May, 2019.

Hon. A. D. WAKO

SENIOR RESDINT KADHI.