



**REPUBLIC OF KENYA HOMABAY LAW COURTS**

**IN THE KADHI'S COURT**

**AT HOMABAY**

**DIVORCE CAUSE NO 4 OF 2018**

**AAO.....PETITIONER**

**VERSUS**

**MG.....RESPONDENT**

**JUDGMENT**

This cause was initiated on 11/7/2018 by one AAO referred herein as the Petitioner against MG the Respondent as is being referred herein.

The Petitioner's prayers against the Respondent is dissolution of marriage and payment of dowry 20,000 Kenyan shillings.

The petitioner a resident within Homabay County testified that she left her ancestral home in 2005 to go and stay with her elder sister who is married in Remba. Around September the same year she got married to the Respondent in accordance to Islamic Custom. They cohabited has wife and husband until late December the same year when the Respondent became mentally ill.

Efforts were made to treat the Respondent in Mbita and Nairobi, but to no avail. As a result, his relatives took him to his ancestral home in Mandera for spiritual healing and after that they used to inform the Petitioner that his condition was worsening.

The Petitioner stated that her marriage with the Respondent was blessed with one issue a boy AAM now twelve years and schooling at [Particulars withheld] within Homabay County.

The Petitioner avers that from time to time the Respondent has been gradually developing extreme mental illness and as a result cannot take on his responsibility has a husband and a parent thus rendering their marriage vulnerable.

Among the reasons which may lead to the termination of a marriage is the husband not having the ability and capacity to provide basic and necessary needs to his wife and children due to illness, imprisonment, disappearance and etc.

Dr. Tanzil-Ul-Rahman state that: "The wife shall be entitled to obtain separation through court on the ground of her husband's madness." See A code of Muslim Personal Law. Page 583.

In that case, a court of law has powers to dissolve the marriage contract after the matter has been heard and witnesses have testified against the husband and proved the case against him.

In the case before us, the Respondent is not a legal person due to his mental state and he is not required by law to defend himself unless proven otherwise in addition to his unavailability. Because of that the Petitioner was unchallenged.

The petitioner was required to produce witnesses to testify in her case but did not produce even one reason being that she has to cater for transport for herself and the witnesses from Remba to Homabay and back together with other expenses and it is difficult to come and go back on the same day.

This court being satisfied with the petitioner's testimony do thereby proceed and make the following orders;

1. That the marriage between the Petitioner and the Respondent is hereby dissolved.

2. The Petitioner to complete her waiting period starting from today before she can enter into another marriage.

No order as to costs.

**Dated, delivered and signed at Homabay this 12<sup>th</sup> day of September 2019**

**Before:**

Hon. Idris N. Nyaboga Resident Kadhi Homabay Kadhi Court