



**REPUBLIC OF KENYA**

**IN THE SENIOR RESIDENT KADHI'S COURT**

**AT MARSABIT**

**CIVIL CASE NO. 25 OF 2019**

**AWB ----- PETITIONER**

**VERSUS**

**SFD ----- RESPONDENT**

**RULING**

a) The above case plaintiff prays for the defendant to be compelled by this Honourable court to return to her Matrimonial home.

b) That the Honourable Kadhi, to conduct counselling to the defendant.

c) Any other remedy that the court deems just and fair to grant.

2) That the respondent opposes the application through her replying affidavit dated 27<sup>th</sup> May 2019 that the defendant threatening to kill her, the defendant avers that he doesn't want to see any of my family.

3) The defendant complains that the plaintiff carries a knife during wrong hours at night.

4) Both plaintiff and defendant appeared before this Honourable court in person without being represented by the legal officer/advocates.

**BACKGROUND**

THAT the parties were married under Islamic Law in 2005, the marriage was blessed with five children, all of their children, stays with their father, because the petitioner complains that the respondent is not responsible to look after his children.

The issue of determination in this application is custody of the children, maintenance of the children and lastly the defendant asked for divorce, she found that she cannot leave under the same roof with the petitioner because she fear for her life. The petitioner used to threaten to kill her, at one time the petitioner carried a knife at wrong hours during the night; this shows that the petitioner is cruel. Elders have arbitrated several times, but the truth of the matter is that the respondent refused completely to go back to her matrimonial home.

As Kadhi, I sent a summon on both parties to come with their witnesses.

PW1; He confirms before this court that the petitioner is cruel, rude, the respondent fear for her life, the one who is giving the truth is the elder who is a neighbour to both of the parties.

DW1; Also confirms before the court that the two have problems in their marriage even the elders are tired of them.

The court tried to do arbitration between the parties but the respondent confirmed before this Honourable court that she can't go back at all cost, simply because she fears for her life.

Concerning the issue of threatening to kill, as addressed by the respondent, he took knife during the wrong hours of the night and they were only two in the house; it is hard to establish the truth because it is wrong hours of the night, no witness, therefore the court found that it is hard to establish the truth.

Prophet Muhamad (S.A.W) said; Any woman who ask for her husband for divorce when there is nothing the fragrance of paradise, will be forbidden to her. Narrated by Al-Trimidhi. This Hadith warn women asking for a divorce from their husband. The wife may ask for the

marriage to be ended if there is a reason that justifies that, such as if there is a reason that justifies, such as, if the husband is misery or absent, and other reasons concerning which the jurist (Fugaha) differed; some are more lenient than others. But that does not depend on her opinion, rather it has to be determined by the Judge/Kadhi. Unless the husband gives her authority to issue a divorce.

Let's look at the Islamic terminology known as KHULU or KHULA – It is a procedure through which a woman can divorce her husband in Islam, by returning the dowry or something else she received from her husband. The most famous case is that of THABIT BIN Qals whose two wives sought divorce from him. One of them Jamillah Bint Abi Salud disliked his features. She said to the prophet, "Nothing can bring him together with me, he is the blackest, the most short-statured, and the ugliest. I don't blame him for his morals, or religion but I am afraid Islam will lose its hold upon me if I am compelled to leave with him, after hearing her complaints the prophet said to her; will you give him back the orchard he gave you. She replied yes and more if he wants. The prophet asked her not to give more and ordered THABIT to accept the Orchard and divorce her. (cited by Siddiqi M.M 1993).

### **WISDOM BEHIND DIVORCE**

If we look at the wisdom behind divorce in the Islamic families system, we found it is essential to lead peaceful and contented life. The wisdom behind divorce is to strengthen family organization and make it most capable of producing potential and dedicated persons to implement divine system on earth and create a righteous and altruistic society.

Divorce helps a person to go out of the stressful situations and gives him or her opportunity once again to become a potential member of the society.

### **CONCLUSION**

After reading and analyzing the above case, the court came up with the following ORDERS:-

1. The marriage between the respondent and the petitioner be dissolved. THAT both parties be issued with the DIVORCE CERTIFICATE.
2. The respondent to return all the gifts and dowry given to her by the petitioner.
3. All the children above the age of seven years should be under the custody of their father and the children below the age of seven (7) years should be under the custody of their mother.
4. All the parties should bear the costs of this suit.

Ruling delivered on 23rd day of October, 2019, before Hon. Adan I Tullu,

In the presence of:-

**HON. ADAN I. TULLU**

**SENIOR RESIDENT KADHI**

**MARSABIT LAW COURT**