



REPUBLIC OF KENYA

IN THE KADHI'S COURT AT MOYALE

DIVORCE CAUSE NO. 30 OF 2019

FAH.....PETITIONER

VERSUS

HMARESPONDENT

J U D G M E N T

1. The brief fact of this case are that the Petitioner contracted a marriage with the Respondent on 20th July, 2010 in accordance with the provisions of Islamic Law.
2. The Petitioner and Respondent cohabited as husband and wife in Nairobi. The said union was blessed with four (4) issues.
3. On 4th July, 2019, the Petitioner filed her Petition against the Respondent for a decree for a dissolution of the marriage, payment of unsecured dowry custody of the minors. This Petition was founded on the ground of cruelty and desertion.
4. The petition as well as the a notice of appearance were both served on the Respondent vide the affidavit of service dated 5th August, 2019. Further, the return of service traced on the file reveals that a process server Mr. Evans Ndalana on 30th August 2019 had duly served the respondents , with a notice of hearing.
5. No entry of appearance and filling of Answer to petition was effected within the requisite period. When the file was called for hearing on 16th Sep,2019 only the Petitioner attended the court and matter proceeded by way of undefended cause.
6. The Petitioner from her uncontroverted testimony testified 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.
7. She further testified that respondent he was unconcerned on the effect of his action and further failed to provide for the petitioner, and the said situation became unbearable the fact which forced the petitioner to move back to Moyale and that all efforts to reconcile/redeem their marriage have been grossly and contemptuously disregarded by the Respondent.
8. In the premises, the Petitioner contended her marriage to the Respondent has irreparably and irretrievably broken down and should be dissolved.
9. I have given due consideration to the oral submission and the ground it's based on..

The court attention is drawn, to Ash-shawkanii's. "*Fat-hul Qadiir*" Vol. 3 pg 21 where it states that.

Divorce has been allowed in Islamic Law as a remedy in incompatible union"

10. The foregoing evidence is not denied or rebutted by the Respondent. The Petitioner's case has been subsequently proved before me to the required standard.
11. Looking at the evidence in totality, it's the view of this court that the upholding of the marriage state is only one of the several objects of public policy...where a marriage has been wrecked beyond hope of salvage, the argument of public policy loses much of its force.
12. To keep the parties tied to one another in the bonds of a marriage which has become a sham is obviously conducive to immorality and potentially more prejudicial to the public interest than a dissolution of the marriage bond.

13. The two parties are no longer living together neither are they planning on reconciling and the existence of irreconcilable deference render the conjugal union impossible. In short, the marriage is in existence in name and nothing more. It is a shell and hence it serves no useful purpose for it to stand.

14. In the premises, there being no response to the petition and on the evidence adduced by the Petitioner. I find for the Petitioner. Accordingly, judgment is entered as prayed against the Respondent for the following orders:-

i) A decree is granted for the dissolution of the marriage between the Petitioner and the Respondent.

ii) The certificate of divorce be issued forthwith.

iii) That the respondent ordered to pay petitioner's dowry.

It's so ordered.

DELIVERED and SIGNED at Moyale this 11th day of Oct 2019.

Hon A .D. WAKO

Senior Resident Kadhi

Moyale law courts.