



REPUBLIC OF KENYA

IN THE SENIOR RESIDENT KADHI'S COURT AT MARSABIT

DIVORCE CASE NO. 50 OF 2019

HG..... PETITIONER

VERSUS

MH.....RESPONDENT

11/9/2019

Before:- Adan I. Tullu - Kadhi

CC: Tume

Plaintiff:- Present

Defendant:- Present

Hon. Adan I. Tullu

11/9/2019

Plaintiff:- HG

ID:[xxxx]

MARSABIT, OLA OTE

Occupation: - Farmer

Defendant:- MH

ID/No. [xxxx];

OLA OTE, MARSABIT

BUSINESS LADY

Hon. Adan I. Tullu

11/9/2019

Plaintiff:- Disobedience; She don't follow my command, she is disturbance lady. She quarrels with the second wife, When I ask her she say I never quarrel with your wife, she said am going to cut you in pieces. She caught me a wrong place my (scrotum), I told elders that all I went through. She also took to elders and took me to the human rights. Let her go back to the children ruled by the human rights. I stayed with my second wife (MD) and got hospitality. I went to hospital and given some of the medication. I got accident, I went to Meru hospital where I was hospitalized for two months. She never came to ask my condition, no talking to each other even my daughter. We no longer like husband to one another, it's the mother who is giving masroof to her children, schooling.

Defendant:- He married me when I was very young, I used to respect him, I have never left my premises, we bought plots and we built. He

started extra marital affairs, I gave two ladies tea and welcomed both of the ladies, he sent those ladies to me since he impregnated a lady. He started fearing me, then I told him since he has impregnated her she is your wife, he hasn't given me my Mahar, elders also told him you are wrong, my Mahr was 3 cows. He gave me (Shomo) gift if he marries another wife, after one month she gave birth, even I send her firewood, I got a son, then she take care of me seven month, then he became sick, he asked for contribution from the members of his family, then he was told we can't allow unless with first lady. I used to give him a soup every day till he was okay and started business with his second wife, no maintenance, he doesn't give me anything, I was supported by my family. He is the one who took us to the human rights, I went to town and she started abusing me , move out of my house, he entered the kitchen he started beating us, he followed me to the neighbours house.

I went to the elders and inform them he is the one who took us to the children. He was told that he is the one responsible to his family, they withdrew the case from the court. He told us let them eat stones by that time I didn't know what that word stands for I learnt recently. He went to the elders and told the elders that I want to come back to my house, he apologized to the elders him and his wife, he said I will pay what I required by the elders. That is how elder's states; children and your wife do good to them that is what the elders told him, he is mentioning the name of the plot, the elders refused that thinking. After I mentioned that they found that he is the one who has the mistake, we asked the elders if its right for someone who stayed for 15 years to come back as wife and husband; the elders said No! that is what elders think, we should ask that question Kadhi if it is adviceable for you to come back to his matrimonial house. That is how I found my way here in this court.

Hon. Adan I. Tullu

Petitioner:- I did not see any elders that she is talking about, first time I married her I didn't ask any elders to witness our marriage.

Court:- The parties to come with two elders on 16th September 2019.

Hon. Adan I. Tullu

11/9/2019

16/9/2019

Before:- Adan I. Tullu - Kadhi

CC: Tume

Plaintiff:- Present

Defendant:- Absent

The case has been postponed to 19/09/2019.

Hon. Adan I. Tullu

16/9/2019

19/9/2019

Before:- Adan I. Tullu - Kadhi

CC: Tume

Plaintiff:- Present

Defendant:- Present

PW1: MOHAMED IDE

MARSABIT

NAGAYO

ID: [xxxx]

PW2: SAID BODA

MARSABIT

DAKABARICHA

BUSINESSMAN

ID; [xxxx]

DW1: HASSAN JILLO

MARSABIT

WABIERA

ID; [xxxx]

POLICE

PW1:- Since they got four children problems started, she started running away from her matrimonial house, to my place, she went to the children office, and I was called, I did not conceal their problem because they are the ones who took their case to the children. The defendant refused completely this matter to be heard by the elders, he took his matter to court, the magistrate said let refer this matter to ADR. The defendant said that, "I don't want my children and my wife, what I want is my piece of land, the plot is lived by his children and wife".

He refused the word from elders and he went back to court, even before court he said that he needs his land, he told the court that this man is the one who married HER. The plaintiff was asked she said HE is my husband, he was asked by the magistrate, the magistrate said it is responsibility of the defendant to pay all the requirements needed by the plaintiff. He came and apologized to me after many years. I told the elders THAT. It is you who can call the elders but not me.

PW3:- First Halima went to college, mother didn't have money, we said we cant assist daughter who has a father. I said between you and your wife let the father finish. We are speaking like family, he is speaking about the land while we are speaking about the wife.

DW1:- Before I was working in children officer mother came around 9.00am, she came and raised complain, my boss sent me. It was around 3.00pm, we went up to home, Mzee called Tuko driver hospital when we came home we found things are worse, between the parties. We are speaking about the conflict, we are here as elders not officers.

I am sick, he showed us the medicine, he said the mother touched him his private parts. He is very sick. We told him we want peace, in this room and we read the letter. Any issue with the land its court case, since that day I don't know what happened.

Hon. Adan I. Tullu

19/9/2019

DW1:- Since his wife touch his private parts he has some children with other wives, her dowry was 3 cows (3 x 20) = Kshs. 60,000/=

Hon. Adan I. Tullu

19/9/2019

Court:- The parties to come for Judgment on 15th October 2019, the respondent to come with Dowry of Kshs. 60,000/=.

Hon. Adan I. Tullu

19/9/2019

REPUBLIC OF KENYA

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DIVORCE CASE NO. 50 OF 2019

HG ----- PETITIONER

VS

MH ----- RESPONDENT

JUDGEMENT

The plaintiff complains against the defendant that she is cruel. The parties were married under Islamic Law 2008, they were blessed with eight children from their legal wedlock, only two are minors the rest of the children are above age of majority that is 15 years according to the Islamic perspective. Both parties lived in Marsabit County, the plaintiff was separated from his family for almost 15 years, the couple like any family has had disputes, severally they were deliberated by the elders but it was not resolved. The issues went to court (Magistrate Court) and court referred the case to the elders where it was difficult for the elders to dissolve because the petitioner insist to have his plot back so that his family could live in a rental house. He wanted to leave with his second wife in that plot. He accepted to give all her Mahr in cash, if the respondent vacate from his plot. The respondent accept to vacate from the said plot if she gets her dowry.

ISSUES

1. The main issue for determination in this case is whether or not the respondent is entitled to divorce and dowry, and to leave the plot which was for the petitioner, the petitioner wants them to vacate his plots and the respondent to leave somewhere with all her children.
2. The respondent under oath stated that the defendant did not pay the dowry of three cows, if he is ready to pay my dowry am ready to leave his plots.
3. Pw1 testified that as an elder he heard parties disputes many times over his assaulting, attempting to kill her and the five days the petitioner and respondent fought, unfortunately the respondent squeezed the petitioners scrotum, which made him to be hospitalized in Marsabit level 4 hospital.
4. Assault and mistreatment of wives offends fundamental rights of a wife under the law it is inhuman and illegal.
5. The following health prohibits harm on any person especially a spouse.

Narrated Abu Sai Al – Khudri (R.A) that the prophet (P.B.U.H) said, there shall be no infliction of harm on one self or others, or there should be no harming or reciprocating harm reported by Im-Majah (2341) Al Dar Al Qutri.

6. Article 87 of the Islamic charter on family; “If the wife has been harmed by her husband to an extent that would be impossible for most people similar to them to continue with marital relationship, under such circumstances she shall have right to ask for divorce. If her husband refuses to divorce her then she has right to raise her case to the judge. If the harm is proven, then the judge shall rule in her favor, thereby divorcing her from her husband.

7. In the instant case, the defendant is a (40) years old lady. The parties have separated for close to fifteen years, contrary to the Islamic Law, due to mistreatment and assault by the plaintiff and their differences case irreconcilable. Accordingly grant her prayer for dissolution of marriage be and is hereby declared dissolved with effect from 15th October 2019.

8. Dowry; The petitioner submitted that her dowry was three cows and was not paid, the petitioner avers that I will pay all her dowry in condition that she vacates from my plots.

9. The petitioner has confirmed before the court that he will bring sixty thousand Kshs. As her Mahr on 15th October 2019.

Under Islamic Law dowry is an inherent advisable to be paid on the marriage time.

O you (believers) are of one another so marry them with the permission of their people and give them their due compensation (re Mahr) according to what is acceptable they should be chaste, neither (of) those who commits unlawful intercourse randomly nor those who take (secrets lovers) NISA 4:25

10. The petitioner to hand over the plaintiff dowry of 3 cows which are equivalent to Kshs. 20,000/= each and he should hand over Kshs. 60,000/=.

CUSTODY

Section 83 (1) of the Children’s Act Cap 141 Laws of Kenya provides;

In determining whether or not custody order should be made in favour of the applicant:-

- a) The best interest of the child, the general rule is that the mother has priority of the custody of her children.

The general principle regarding custody of the minor Article 106 (1) the child should have the right to have someone in custody to care for and raise him and to provide for his physical and psychological needs according to Islamic Sharia.

The general principle regarding the custody of the children is that unless exist a peculiar and special circumstances, the mother has priority.

The custody of the children has been granted to the mother – Respondent

b) The petitioner requested the family to vacate from his residential plot, the petitioner and the family his children to vacate. The court has confirmed that the plots belongs to the petitioner and its not in order the court to request the respondent to vacate from the said plots.

The court has granted the ownership of the plots to the petitioner, he has to give the respondent sometimes period not less than six (6) months to stay in that plot as she look for safer place to stay with her children.

c) **No orders as to cost.**

Orders accordingly.

Dated and signed and delivered at Marsabit Law court on 15th October 2019.

HON. ADAN I. TULLU

SENIOR RESIDENT KADHI

MARSABIT LAW COURT