



REPUBLIC OF KENYA
IN THE SENIOR RESIDENT KADHI'S COURT
AT MARSABIT
CIVIL CASE NO. 41 OF 2019

TDT----- PETITIONER

VERSUS

HGH----- RESPONDENT

JUDGEMENT

- The petitioner complains against the respondent that he is cruel, drunkard.
- The marriage took place between the petitioner and respondent in 2017 March.
- The marriage was blessed with one child both parties lived in Marsabit county,
- The petitioner ran out of her matrimonial home, just because the petitioner is cruel, he used to beat the respondent especially when he is drunk, when the respondent was served with the summons he tore them into pieces before the court process server.

The respondent denied all allegations made against him by the petitioner.

- The respondent complaints against the petitioner that she commits adultery, she brought someone into her matrimonial house when the respondents is away, when the respondent came home he found that someone was with his wife, he knocked the door and the petitioner refused to open the door, the respondent told the court that I was taken to police custody where he spent that night in police custody.

ISSUES OF DETERMINATION

- i. Whether the petitioner will be divorced by the respondent.
- ii. Another issue is that who is going to stay with the children because issue of

the children is very vital. Prophet Muhammed (S.A.W) said any human who ask for her husband for divorce when there is nothing the fragrant of paradise will be forbidden to her. Narrated by Al Tirmidhi, This Hadith Waru women asking for divorce from their husbands.

The wife may ask for the marriage to end if there is reason that justify, such as if the husband is misery or absent, and other reasons concerning that which Furir (FUQAHA) different; some are more lenient than others. But that does not depend on her opinion rather it had to be determined by the JUDGE/KADHI. Unless the husband gives her authority to issue divorce.

iii. Another issue is that the husband accused his wife of adultery; meaning that he found someone in his house late at night, without producing four witnesses, before the Kadhi; **Allah (S.W) said, And those who launch a charge against their wives and have (in support) no evidence but their own - let one of them testify four times by Allah he is of those who speaks.**

And in the fifth (oath) (should be) that he solemnly invokes the curse. But it will a..... the punishment from the wife, if she bears witness four times with an oath by Allah, that (her husband) I telling a lie.

And the fifth oath should be that she solemnly invokes the wrath of Allah on herself if (her assessor is telling the truth. SURAH AN NUR Verse (6,7)

The above golden verses clearly indicate that the respondent cannot accuse his wife of adultery unless he produces four male witnesses or take an oath.

CONCLUSION

1. The marriage between the petitioner and the respondent be dissolved on 15th October 2019.
2. The respondent to pay the dowry of Kshs. 20,000/= in cash.
3. The respondent has full authority to access his children.
4. The respondent to pay Kshs. 6,000/= monthly.

JUDGMENT DELIVERED ON 15TH OCTOBER 2019 BEFORE PLAINTIFF

- i. Defendant

ii. Plaintiff

iii. CC. Qabale

HON. ADAN I. TULLU
SENIOR RESIDENT KADHI
MARSABIT LAW COURT