



REPUBLIC OF KENYA

IN THE KADHIS COURT AT HOLA

DIVORCE CASE NO 5 OF 2017

MHK.....APPLICANT

Verses

GA.....RESPONDENT

JUDGEMENT

On 5th day of DECEMBER 2017 the plaintiff herein one **MHK** of Id number 2769848 filed a plaint against the defendant **GA** seeking from this honorable court for:

- (a) Past maintenance at the rate of ksh 300/= per day for 1 year which is 108, 000/=
- (b) Dissolution of marriage.
- (c) Cost of this suit.

On hearing, the plaintiff claims that, her life with the respondent has never been a bed of roses as he has been very cruel, abusive, assaulting and threatening her with a knife. The respondent has been very irresponsible, that he never provides home maintenance and school fees for his children. This reason caused the applicant to leave her matrimonial home to her parents since October 2016 up date.

The applicant sought that, She has been forced to work extra hard as maid to put food on the table for her three children. The respondent has denied her conjugal rights for lengthy periods. She views that this marriage has lost meaning and failed. To support the issue the applicant availed two witnesses whom testified confirming the applicant's claim.

P W 1. Dala Shampalo said that, the parties here are his near relatives, the applicant and her 2 children are staying with him since October 2016 up date. They tried to solve the problem as elder of both parties but the respondent did not comply with the elders advice. It is true that the respondent failed to provide maintenance and school fees since his family is staying with him. He advised applicant to go back to her matrimonial home but the applicant refused saying that: She will face the death from the respondent who threatened her with a knife.

P W 2. HH applicant's mother said what she knows the applicant was threatened by the respondent. She confirmed from applicant's neighbors. She knows that the respondent failed to provide maintenance.

On the other hand, the respondent denied all applicant's allegations saying that there was no dispute between them, he traveled to witu for job. He was informed by his elder son that, the applicant had decided to leave the home. The respondent came back immediately to know the problem. The applicant brought her complaints before elders saying that, the respondent has failed to communicate with her and also failed to send masruf. The elders advised him to built a house for the applicant, but the respondent refused to built it, instead he rented a house for her. The respondent availed two witnesses.

D W 1. KM : He knows that there was dispute between the couples and the applicant left home.

DW2 . One day at night the respondent had beaten his wife ,then the witness went there to know what is going on. Then the step mother told him that what the respondent did was wrong.

I have noted the issue clearly and I found that the respondent has been the problem in this marriage for the following reason :

Upon examining through the cross examination by the court the respondent Admitted that he had beaten his wife and he asked -1 her for forgiveness and for return to her matrimonial home. According to the Islamic jurisprudence: (?????? ???? ?????) fiqh

(sunnah) meaning: admitting is powerful evidence

2 - That the evidence from P W 1, P W 2 and DW1 are very clear that the respondent assaulted and threatened the applicant . The respondent failed to provide maintenance.

Concerning the previous maintenance requested by applicant. Is the wife entitled to it upon her request before the court? The Muslim scholars have different opinions on that therefore the court has option to choose one from that different opinion which is more appropriate to apply on the reality ruling.

Upon hearing both parties herein and the witness produced by the both parties, the matters to be determined are:

(a)Is the honorable court entitled to dissolve the marriage as per plaintiff's prayers?

(b)Is the plaintiff entitled to her dowry of 4 cows?

(c) Is the applicant entitled to previous maintenance ?

Returning to issue (a) whether this court can dissolve the marriage as per plaintiff's prayers? It is clear to this court that the evidence adduced by the applicant has proved that this marriage is not worthy according the Holy Quran and the hadith of prophet SALLA ALLAHU ALYHI WASALAM.

Referring to issue(b) According to Islamic law the respondent is entitled to be paid dowry of 4 cows which is Almost equivalent to ksh 40000 .As stated in the holy Quran chapter 4 verse 4 (and give the woman upon marriage their bridal graciously)

Back to issue (c) Due to the financial situation of the respondent and the reliance on the doctrine of the Abu Hanifa, the court sees to drop down the previous maintenance on the respondent as the most appropriate in the application of the reality ruling.

On this basis, I hereby order that:

1 - This marriage is dissolved on faskhu ground as requested by the applicant on condition that :

- a. The applicant should wait for eddah period of three months from today.
- b. Divorce certificate to be issued today.

2- The respondent to pay the plaintiff 4 cows or 40000/= within 3 months from today.

3 - The court has dropped the past maintenance on the respondent.

These are orders of this court

4- Custody of the child is given to the plaintiff and the respondent has reasonable to access them.

5- It is compulsory for the respondent to pay kshs. 2000/= as maintenance for his child monthly effect from March.

R/ A -30 days.

Read and delivered this 7th day of JANUARY, 2018 in the presence of;

Mursal.M.Sizi-----kadhi

court Assistant-----Suleyman

- Plaintiff.

- respondent