



**REPUBLIC OF KENYA**  
**IN THE KADHI'S COURT AT GARSEN**  
**MATRIMONIAL CASE NO 2 OF 2018**

**JUDGMENT**

**SE.....APPLICANT**

**VERSUS**

**HBG.....DEFENDANT**

This matrimonial matter was filed on 17<sup>th</sup> JULY, 2018. The applicant prayed for:

- a) The respondent to take care of the plaintiff and her up keep.
- b) The full custody of all the children to be given to the mother (applicant)
- c) Payment of dowry of 4 cows and 13 goats.

The applicant alleged that she was chased by her husband without any misunderstanding, conflict or differences. It is six months now and respondent failed to take his responsibility of shelter, housing and health on the wife and her children.

To support the issue, the applicant availed 4 witnesses who testified confirming the applicant's claim namely: Adan Elema , Swaleh Shobe ,Omar Shobe Wario and Bofu Kuno .

They certified that what the applicant said is the truth. In addition to that, this dispute has been brought before elders for reconciliation through by their effort but they were not successful because of lack of full participation by the other party, then they advised the applicant to bring the issue before this court .

The applicant claimed that the respondent has not yet released her dowry of cow which gave bath and number increased to 4 cows. She sold one of them and bought the goats. The applicant availed herder to support her allegation regarding the dowry. The herder testified that he doesn't know anything about the dowry. Looking side of the defendant, he admitted that he failed to provide home maintenance to his family when she was her family member .He totally objected the claim that he chased her from her matrimonial home. The truth is that she left for her brothers without his consent.

The respondent sought that what he knows about the dowry is one cow only. The applicant sold same cows the reminder is one and there no goats belong to her

The respondent said that he still loves his wife and prays this honorable court to dismiss this cause.

I have noted the issue clearly and I found that this marriage has lost meaning and failed for the following reason:

1. The elders tried for reconciliation but their effort did not bear fruit.
2. The honorable court ordered them to go for ADR and report back but they are not successful.

In the proceeding the applicant totally rejects to go back to her matrimonial home. On that the .3 defendant responded saying that he can't stay with her if she decided on that decision. This is evident that this marriage is not worthy according to the Holy Quran Allah saying in the holy al Qur'an surat arum verses 21(?????? ?????????? ??? ???? ???? ???? ?????????????? ?????????????? ?????????????? ?????????????? ?????????????? ?????????????? ?????????????? ?????????????? ?????????????? ?????????????? ??????????????) meaning : Among His proofs is that He created for you spouses from among yourselves, in order to have tranquility and contentment with each other, and He placed in your hearts love and care (.towards your spouses. In this, there are sufficient proofs for people who think

Concerning the dowry the respondent agreed one cow while the plaintiff claimed more than one and she availed witness who said he doesn't know anything about the dowry. According to Islamic jurisprudence .(?????? ??? ??????) meaning that: the applicant to prove his claim

On my observation of the issue, I hereby order that;

- 1- This marriage is hereby dissolved as requested by the applicant on faskh ground on condition that.
  - a- That the applicant should wait for eddah period of three months starting from today 6th November 2018.
  - b- Divorce certificate to be issued today
- 2- It is compulsory for the respondent to pay 1 cow as the dowry within 15 days from today 6th November 2018.
- 3- Custody of the 4 children (G 7 years old I 5 years old A 3 years old and M 1 year old) is given to the applicant and the respondent shall have reasonable access to them.
- 4- It is compulsory for the respondent to pay kshs. 10,000/= as maintenance for his children monthly effective from December 2018.

These are orders of this court . R/A 30 days

**Read and delivered this 6th day of November 2018 in the presences of**

**Mursal M Sizi - Kadhi**

C/A

Applicant

Defendant