



REPUBLIC OF KENYA

IN THE KADHI'S COURT OF KENYA AT MOYALE

DIVORCE CAUSE NO. 26 OF 2018

HGB.....PETITIONER

VERSUS

AID.....RESPONDENT

JUDGMENT

1. The Petitioner and the respondent got married on 24th June ,2012 in accordance with Islamic law . Out of the union they were blessed with one child.

2. The petitioner filed this petition on 6th September 2018 seeking the dissolution of the marriage on a ground of desertion and negligence ,custody of the child, the agreed dowry of two cows and ancillaries.

3. The petition was served to the respondent and respondent filed an answer to the petition which included a cross petition , on 12th October 2018, praying for orders that the petitioner's petition be dismissed and also stated that the agreed dowry 2 cows.

4. The petitioner's gave evidence and reiterated the particulars of desertion and negligence as contained in the petition. According to the petitioner, the Respondent has subjected her to extreme psychological abuse which on occasion resulted into serious and permanent emotional scars. The petitioner further testified that the said situation became unbearable the fact which forced the petitioner to confront the respondent family on the said issue and that all efforts to reconcile/redeem their marriage have been grossly and contemptuously disregarded by the Respondent.. She further stated that respondent has been reluctant in contributing to matters affecting the development of the family. As a result the existence of their marriage has ceased to serve any useful purpose and from all indications it is impractical to salvage due to the conduct of the Respondent. It is for these reasons that she sought divorce.

5. on the day of trail the respondent stated that petitioner and him agreed that the petitioner to stay at her family place during her pregnancy period but later refused to go back to her matrimonial home ,Later the respondent seek court intervention and filed case no. 14 of 2014 , the presiding kadhi ruled in favor of respondent and ordered the petitioner to return back to her matrimonial home.

6. I have carefully studied and internalized the Petition as well as the submissions of the Petitioner Sworn Witness Statement on Oath. In the present case, although the Respondent was aware but failed to appear during the testimony of the witnesses in court. I also perused through case no.14 of 2014 and find that prayers was the same that was comprehensively determined by learned kadhi.

7. While the sanctity of marriage is the essential basis of family life, the incompatibility of individual and the weakness of human nature requires certain outlets and safeguards if that sanctity is not to be made into a fetish at the expense of human life or otherwise it must be protected. I do hereby disallow the Petition, the petitioner should have complied with the finding of learned kadhi in the case 14 of 2014 or launch an appeal to higher court if aggrieved since this court is not superior.

8.To answer the question of the petitioner's entitlement to dowry of two cows ,the court attention was drawn to Holy Quran Chapter 4, verse 4 where it is stated that:

“And give to the woman (whom you marry) their Mahr (obligatory bridal – money given by the husband to his wife during marriage) with good heart.....”

9.It is the opinion of the court based on the above source that dower is enjoined by the law merely as a token of respect for its object (the woman) therefore the mention of it is not absolutely essential to the validity of a marriage and for the same reason, a marriage is also valid although the man is obliged in the contract to give out consideration as an essential condition for the validity of marriage.

10.Unpaid Mahr (dower) is considered as an unsecured debt payable to wife by the husband or from his estate therefore Muslim widows and

divorcee have a right to recover the debt during the life time of husband or his estate, if she predeceases her heir are entitled to the dower and such right is enforceable upon the termination of the marriage between the husband and wife.

11. On the issue of maintenance of the minor Sec. 24 of the child act and the Constitution as well as Al hidaya put a duty on parents to maintain their child. That duty gives the minor a right to education and guidance, immunization, adequate diet, clothing, shelter and medical.

12. Grant of maintenance to children should be perceived as a measure of social justice Chap. 2 V 233 of the Holy Qur'an is a measure of social justice and is specially enacted to protect children and falls within constitutional sweep of Article 19(2) reinforced by Article 21(3) and Article 53 of the Constitution. It is meant to achieve a social purpose. The object is to prevent vagrancy and destitution. It provides a speedy remedy for the supply of food, clothing and shelter to the Children.

13. It gives effect to fundamental rights and natural duties of a man to maintain his wife, children and parents when they are unable to maintain themselves

14. Thus a father according to his means is responsible for the maintenance (monetary) of his sons till they attain the age of maturity and of his daughters till they are contracted into marriage. See Holy Quran Chap 2 V 233.

15. Thus the responsibility of the father for the maintenance of his children is unconditional and absolute as such no father should be treated unfairly and or harmed on account of his child; physically, mentally or morally.

Accordingly, I make the following orders:-

1. That, the petition is hereby dismissed but the petitioner at liberty to relinquish her dowry in return of her freedom from marriage.
2. That, unpaid mahr two cow shall be paid by the respondent.
3. That, the respondent shall provide for the upkeep of the child of the marriage.
4. No, order as to cost.

DATED and DELIVERED at NAIROBI this 24th day of Dec 2018

A.D WAKO

Senior Resident Kadhi

MOYALE LAW COURTS