



REPUBLIC OF KENYA

IN THE KADHIS COURT AT KISUMU

CIVIL CASE NO 57 OF 2017

1. ZDB.....APPLICANT

VERSES

2. IT.....1st RESPONDENT

3. TR.....2nd RESPONDENT

JUDGEMENT

In this civil cause dated 22nd December 2016 the applicant prayed for:

- 1- the court to ask her husband to change and come back to the family.
- 2- Father in-law should stay aside and stop disputing her marriage.

The Proceeding of this suit proceeded ex parte. The respondent failed to be appear before this court.

The plaintiff claims were that ; She confirmed that her life with the respondent has never been a bed of roses as he has been very cruel, abusive and assaulting her. Addition to that the first respondent (Ismail) is under control of his father in everything even in his marriage.

The applicant sought that when she was staying with her husband, she delivered the first child. The child was sick and under medication. She didn't get any favor from the respondent and his family until the child passed away in her hand .

She was staying in bad relationship with her husband's family. This reason caused her to leave her matrimonial home 1 year and 7 months ago. unfortunately, Ismail and his father didn't come to her parents for reconciliation.

To support the issue, the plaintiff availed two witnesses, namely Dokota and Boru. They testified confirming the plaintiff 's claims in respect of the difficulties in her matrimonial home .

Looking the side of respondent, the first respondent failed to appear before this court while 2nd respondent said that he can't say anything because he is not the husband of the applicant. However, he agreed to help the applicant with 3000/= paid 1000 and balance is 2000/=.

I have noted this issue clearly and I found that the applicant is living with her child in bad condition without any help from the husband's family. Addition to that, the 2nd respondent paid 1000 /=. In this reason, She is ready to dissolve her marriage.

Upon hearing , applicant herein and the witnesses produced by the applicant the matters to be determined are :

- (a) is the honorable court entitled to dissolve the marriage as per petitioner's prayers.?
- (b) Custody and maintenance of the child.

returning to issue (a) whether this court can dissolve the marriage as per petitioner's prayers.?

It is clear to this court that the applicant stayed without communication with her husband . She doesn't know whether she is his wife or not. This is contrary to Islamic Sharia as stated clearly in chapter 4 verse 129(so as to leave the other hanging (i.e. neither divorced nor married).

Also the respondent failed to provide maintenance for his family over 1 year and 7 months ago.

Upon examining through the cross examination by the court, the applicant answered that she wants to break her marriage instead of her current situation.

Back to issue(b) Custody and maintenance of the children.

Under Islamic sharia - has ordered that the custody of the children is responsibility of the mother if the husband pays the maintenance for his children. as clear in the holy Qur'an chapter 2 verse 233(وَاللَّائِمَاتُ عَلَى الرِّجَالِ مِثْلُ مَا عَلَى النِّسَاءِ) (And mothers shall give suck to their children for two whole years; this is for those who desire to complete the period of suckling. And the man to whom the child belongs shall be responsible for their (the mothers') maintenance and clothing according to usage.)

on this basis I hereby order that:

- 1- This marriage is hereby dissolved as requested by the applicant in the way of Faskhu.
- 2- That the applicant should wait for the eddah period of three months starting from today 8th March 2017.
- 3- Divorce certificate to be issued on 8th March 2017.
- 4- It is compulsory for the respondent to pay kshs. 3,000/= as maintenance for his children monthly effective from march 2017.
- 5- The 2nd respondent to pay 2000/= as balance of 3000/= which he agreed to give the applicant within 30 days from today.

These are orders of this court

R/ A -30 days

Read and delivered this 8th day of March 2017

in the presence of

Mursal.M.Sizi-----kadhi

court Assistant-----

Petitioner-