



STM v RMD (Civil Case 202 of 2015) [2016] KEKC 37 (KLR) (14 January 2016) (Ruling)

STM v RMD [2016] eKLR

Neutral citation: [2016] KEKC 37 (KLR)

**REPUBLIC OF KENYA
IN THE KADHIS COURT AT MOMBASA
CIVIL CASE 202 OF 2015
AH ATHMAN, PK
JANUARY 14, 2016**

BETWEEN

STM PLAINTIFF

AND

RMD DEFENDANT

RULING

1. The defendant prays for orders that this Honourable court be pleased to vary and / or review its judgment of October 22, 2015 to the effect that she be granted divorce through Khul'u and that she relinquishes her dowry and edda rights.
2. The defendant / applicant deponed that the plaintiff/ respondent prayed for her return to the matrimonial home or divorce through Khul'u compensation, that he deserted her for six years which led her to understand the marriage had ceased and not having legal knowledge entered into another marriage. She deponed that upon his finding out about the second marriage he blackmailed her demanding KES 150,000.00. She states the court, after diverse hearings, nullified the second marriage and ordered her to return to the matrimonial home with the plaintiff. She deponed that she finds it impossible to live with the plaintiff and is ready and willing to relinquish her dowry, furniture worth KES 40,000.00 which the plaintiff had not paid her in return for the Khul'u divorce.
3. The plaintiff / respondent,, in reply deponed that the defendant should not be granted audience by the Honourable court for having disobeyed its orders, that it is not true there is no love between them as he still loves her dearly and has been anxiously awaiting her return. He contends he fully paid the furniture which is at the matrimonial home. He denies having deserted her for six [6] years and that she could not prove this claim before court. He stated that he mentioned the KES 150,000.00 not as compensation for divorce but as amount used for her medication. He prays that she be ordered to comply with the orders of the court failure to which he be granted leave to institute criminal proceedings against her.



4. In the judgment in this matrimonial matter entered on October 22, 2015, I made two major findings:
 1. The defendant illegally entered another marriage while still wedded to the plaintiff. The second marriage done on April 17, 2015 was declared null and void. The marriage certificate No. [...], S/No. [...] cancelled.
 2. While two human beings cannot be forced to live with each other, the husband is entitled to his wife, even upon knowing she had been illegally living with another man. Accordingly, the defendant was ordered to return to the matrimonial home in Buxton within one week and the parties to observe their marital duties and obligations.
5. Is the defendant / applicant entitled to divorce through Khul'u principle? This is the main issue for determination in this application.
6. Divorce is legal as a last resort where the objectives of marriage cannot be attained. Islam abhors divorce, it is disliked by Allah but it is permissible when it is necessary. It oughtn't be taken lightly and / or effected merely due to dislike of some of the wife's behaviour for there surely exist in her other desirable traits.
7. It, originally, lies with the husband. Upon pronouncement and / or writing it becomes effective. However where the wife also has a right to end the marriage through Khul'u if she cannot fulfil the marital rights of the husband and or cannot stand or near to remain with him even though he has not hurt her. It is normally consensual, however, if they cannot agree, the wife can raise to court for same. It is based on the following authorities:

“and it is not lawful for you (men) to take back (from your wives) any of your mahr (bridal money given by the husband to his wife at the time of marriage) which you have given them, except when both parties fear that they would be unable to keep the limits ordained by Allah (e.g. to deal with each other on fair basis). Then if you fear that they would not be able to keep the limits ordained by Allah then there is no sin on either of them if she gives back (the mahr or part o it) for her al- khul'u (divorce). These are the limits ordained by Allah so do not transgress them and whomsoever transgresses the limits ordained by Allah then such are the zalimun (wrongdoers) Al Baqarah: 229

Ibn Abbas (RA) narrated that the wife of Thabit Ibn Qays Ibn Shimas told the prophet (PBUH) : ‘ O prophet, I have no problem with my husband’s conduct and piety but I hate to ‘apostasy in Islam’ (not able to observe the limits of Allah in marriage), the prophet asked her, ‘ will you return to his his farm? (dowry) she said ‘yes’; the prophet then told Thabit, ‘accept back the farm and divorce her.’ it is reported by Bukhari and Al Nasaiy. In Dar al Qutny’s version, the lady said : ‘ I am ready to return the farm and more’ , the prophet said : ‘return the farm only’

Article 89 of the [Islamic Charter](#) on family provide:

If a woman hates her husband and cannot stand him, even though he hasn't hurt her in any way, that could be considered grounds for divorce and if she can no longer bear to remain with him, then she has a right to request divorce in exchange for giving up any right that would be due to her as a result of the divorce and returning any dowry or gift that he gave her.

[The [Islamic charter on Family](#) is published by the International Islamic Committee for women and Child IICWC with contributions from eminent Muslim scholars: Dr Abd El Lateef Aamir, Dr Abdurrahman El Naqeeb, Dr Ahmad Assal, Dr. Ahmad El Mahdi Abd el



Haleem, Dr Ali Gomaa, Dr. Fathi Lashin, Dr Jamal Al Din Atiyyah, Dr. Makarim El Deeri, Dr Mohammad Emarah, Dr Muhammad Kamal El Din Imam, Dr Salah Abd El Mutaal, Dr Yusuf Al Qaradawi].

8. In this case, the plaintiff clearly still loves his wife but the wife clearly does not. It has happened before in the times of the Prophet [PBUH]. It is reported Thabit Ibn Qays loved his wife as much as she hated him. He had to divorce her but used to follow her around out of love to her.
9. The dowry between the parties was furniture worth KES 40,000.00. The defendant states she was not given but the plaintiff states she gave it and it is available at the matrimonial home. He submitted that he had sold the original furniture but has since replaced it. I find it is paid, the furniture at the matrimonial home.
10. The defendant / applicant is entitled to divorce through Khul'u. It is her legal right. She is required to refund the dowry to get divorce through the Khul'u instrument. She would have been entitled to get the furniture if they had divorced through normal divorce. She has relinquished. It the compensation required for Khul'u divorce.
11. The parties marriage is hereby declared annulled through khul'u divorce with effect from January 14, 2016 same as 3rd Rabee ul Thani 1437 AH Divorce certificate to issue.
12. The plaintiff submitted that the furniture is for the defendant and should take it in the event the court grants divorce. He is entitled to retain the furniture but it is within his right to give it to her. It would be considered a gift.

No orders as to costs.

Orders accordingly.

DATED AND DELIVERED AT MOMBASA ON 14TH JANUARY 2016.

ABDULHALIM H. ATHMAN

PRINCIPAL KADHI

In the presence of

Mr. Yusuf K. Abdulrahman court assistant

Plaintiff / respondent

Defendant / applicant

