



ZMH v SSM (Civil Case 228 of 2015) [2016] KEKC 20 (KLR) (28 January 2016) (Judgment)

ZMH v SSM [2017] eKLR

Neutral citation: [2016] KEKC 20 (KLR)

**REPUBLIC OF KENYA
IN THE KADHIS COURT AT MOMBASA
CIVIL CASE 228 OF 2015
AH ATHMAN, PK
JANUARY 28, 2016**

BETWEEN

ZMH PLAINTIFF

AND

SSM DEFENDANT

JUDGMENT

1. In this matrimonial matter, the plaintiff prays for her dowry, return of household goods and edda maintenance. She claims they married on October 31, 2014 but the defendant divorced her on May 31, 2015 and a divorce certificate has already been issued but the defendant has refused to hand over her dowry and household goods.
2. The defendant denies the claims. He states filed a four page defence where he gave Kes 120,000.00 which he handed over through the plaintiff's parents. He further states that he bought new furniture which was his and not part of the dowry; that the plaintiff, contrary to their agreement on the dowry, told him to tell the assistant registrar of Muslim marriages & divorces, Sheikh Ashbal Karama that the dowry was furniture worth Kes 150,000.00 and Kes 60,000.00, which he reluctantly did. He states he divorced the plaintiff on finding out about her unfaithfulness. He claims she owes him Kes 36,500.00 being the balance of the cost of goods he sent her for her business. Regarding the claim for edda, he states that the plaintiff's father refused her to observe edda at the matrimonial home saying he is able to fully take care of her.
3. The parties were married under Islamic law on October 31, 2014 and divorced her on May 31, 2015. Divorce certificate No xxx S/ No xxx was issued on June 2, 2015 at the Kadhis Court - Mombasa. They are not blessed with any children. The parties were young couple, the plaintiff is 24 years and the defendant is 31. The defendant's sister met the plaintiff in [particulars withheld] where she was also learning, and introduced her to her brother which led to their marriage. The defendant worked in Dubai. The plaintiff engaged in business of selling goods



4. In his pleadings and during trial, the defendant extensively detailed why and how he divorced the plaintiff. He alleged she married him to defraud him while she had another illegal relationship with another man, one I M of [particulars withheld]. The arguments in this regard have no relevance to the determination of the issues in this matter.

5. I noted a lot of animosity not only between the parties but also between members of their two families. Both parties, in my view, showed lack of respect to the other and parents and relatives of the other party.

The issues for determination in this matter are:

1. What was the dowry in this marriage and whether or not the defendant owes the plaintiff any dowry.
2. Eddat maintenance
3. Plaintiff's kitchen utensils
4. Debt plaintiff owes the defendant

Dowry

6. The plaintiff's claim that the furniture at the matrimonial home constituted her dowry is supported by the marriage certificate and her witnesses: M H Y PW1, H S J PW2 and H M H PW3. The witnesses are father, niece and sister to the plaintiff respectively. On the other hand the defendant's position that the dowry was Kes 120,000.00 which was fully paid through her parents, is supported by his witnesses, S M A DW1 N M DW2, his father and sister respectively.

7. In the marriage certificate the dowry was furniture worth Kes 150,000.00. In her pleadings and evidence in chief, the plaintiff is categorical the value of the furniture was Kes 120,000.00 confirming there was an error in the marriage certificate. The defence witnesses are positive they witnessed the plaintiff's father being given, receiving Kes 120,000.00 in an envelope and confirming the amount and handed it to his wife, all this at the defendant's parent's home where the couple was also living. Defence witness also testified that the furniture belonged to the defendant but they agreed to let her choose the design at the carpenter's on her insistence and since she was the wife and the one who will use it. Which of the two sets of evidence is more credible? Both are convincing. This is always a difficult situation for a judicial officer. It is however the purpose of having experienced and fair arbiters of disputes. The trial Kadhi has to use his experience in analysis of evidence and knowledge of laws of evidence to make a determination. Under Islamic law of evidence, where strong evidence clash, one for and the other against, both sets of evidence collapse and the original status is retained.

8. The evidence of the party's witnesses in this case collapse for strongly contradicting each other. Several times party agree, wrongly, to give the assistant registrar or even Kadhi wrong details about the marriage for example that the dowry is paid when it is not, or different dowry than the one agreed between them. In case of disputes on dowry, the entry of the marriage certificate is binding and spouses are encouraged to give the correct details to registrars of marriages.

9. In the instant case, parties' witnesses having collapsed, only the marriage certificate remain as a credible evidence. The defendant failed to demonstrate how he was forced to give, according to him, wrong details of dowry to the assistant registrar of marriages. No evidence of coercion was given. Marriage certificate is evidence of the details thereof unless there is proof to the contrary. The error on the value of the furniture does not make the entire certificate a nullity. It only means the value shall be that admitted in court. Further the defendant could have produced but did not, the receipt of the furniture. It would have supported his claim. Accordingly I find, on the balance of probability, that the dowry



was furniture worth Kes 120,000.00 fully paid. This is the furniture at the matrimonial home. The defendant shall release the same to the plaintiff within [45] days from date hereof.

Eddat Maintenance

10. The defendant recognises the plaintiff's right to eddat maintenance. He admits not having given it to her because her father offered to take care of her. Eddat is observed at the matrimonial home. By observing it at her parents on her father's request and agreement of the defendant, the parties or their parents should have agreed on the modalities. There was no agreement. It was proven the defendant had asked the plaintiff's father in the divorce talk, how much he was to pay as eddat. His answer was evasive. As a parent and a cleric he failed to give direction. He took responsibility to take care of her daughter during this period, it is construed to mean to he was ready to take all responsibility during this waiting period. In fact his statement clearly show he was able to take all her responsibilities. Accordingly the defendant cannot now be asked, unless he wills of his own volition, to pay the eddat maintenance. The claim fails.

Plaintiff's Kitchen Utensils

11. The defendant did assist the plaintiff's father and sister to get her clothes and personal belongings. This is commendable. However although he denies stopping them from taking her kitchen utensils, evidence is overwhelming to the contrary. He is ordered to return the same.

Debt

12. The defendant claimed the plaintiff owes her money and now remaining Kes 40,910.00. Plaintiff father's evidence is that it is Kes 10,000.00. It was not documented. The admitted amount is confirmed as debt, the plaintiff to pay the same to the defendant.

No orders as to costs.

DATED AND DELIVERED IN MOMBASA ON 28TH JANUARY 2016

ABDULHALIM H ATHMAN

PRINCIPAL KADHI

In the presence of

Mr. Yusuf K. Abdulrahman, Court Clerk

Plaintiff

Defendant

