



X M C v S H A (Civil Case 276 of 2015) [2016] KEKC 36 (KLR) (28 April 2016) (Judgment)

X M C v S H A [2016] eKLR

Neutral citation: [2016] KEKC 36 (KLR)

**REPUBLIC OF KENYA
IN THE KADHIS COURT AT MOMBASA
CIVIL CASE 276 OF 2015
AH ATHMAN, PK
APRIL 28, 2016**

BETWEEN

XMC PLAINTIFF

AND

SHA DEFENDANT

JUDGMENT

1. The plaintiff prays for dissolution of the marriage and issuance of a divorce certificate. She claims the defendant has refused to provide for her as a legal wife.
2. The defendant was served in person and through his email on her application. Affidavit of service were duly filed. He did not enter defence or appearance. The matter proceeded ex parte under Order 12 (2) (a) *Civil Procedure Rules*.
3. The parties were married under Islamic law on September 4, 2007 at Mombasa. The marriage was conducted by Sheikh Ali Darani. They are not blessed with any child. They are both resident in the United Kingdom.
4. The plaintiff is a national of the United Kingdom. Her family is in Kenya just like the defendant. They met in Abu Dhabi. He came to Kenya to meet her relatives, proposed and married her. When she returned to London she processed his visa and he joined her. He is an [particulars withheld] but was not employed. He worked free lance. She is a retail manager with [particulars withheld]. She alleges he refused to get full time employment.

Issues

5. The main issue for determination in this matter is whether or not the plaintiff is entitled to divorce.



Divorce

6. The defendant testified that she has been taking care of the couple and the defendant refused to contribute and take care of his marital responsibilities. She stated she takes care of everything. She bought the apartment, pays all the bills, provides for food etc. She filed water bills, HSBC credit statements, copy of the lease of the apartment Flat 58, D[particulars withheld]. They are in her name. The plaintiff stated she felt she is the one who married him as she is taking care of the household. She feels he is taking advantage of her hence the prayer for dissolution.
7. The defendant did not file defence to the plaint. He neither appeared to rebut the claims. We find as fact the defendants abdication of his martial responsibilities.
8. Islamic law provides that husband is obligated to provide for his family. The following are some of the authorities in this regard.

' Men are protectors and maintainers of women, because Allah has made one of them to excel the other, and because they spend (to support them) from their means. therefore the righteous women are devoutly obedient (to Allah and to their husbands) and guard in the husband's absence what Allah orders them to guard (e.g their chastity, their husband's property. as to those women on whose part you see ill-conduct, admonish them (first), (next), refuse to share their beds, (and last)beat them (lightly, it is useful); but if they return to obedience seek not against them means (of annoyance) . surely Allah is Ever Most High, Most Great'. Nisa:4:34

Muawiyya al Qushairiy reported that his father asked the Prophet : 'what are the rights of our wives on their husbands?' The Prophet (pbuh) said: "Feed her when you eat and clothe her when you clothe yourself, do not beat her face and do not migrate (stay away from her) except (if it be necessary) in the (same) house.' Reported by Imams Ahmad, Abu Daud, Nasaiy; ref: Subulul Salam vol 3 pp 220

Ibn Qudamat and Ibn Mundhir report Juristic consensus among Muslim scholars that a husband is obliged to provide for his wife except if she is disobedient.

The Prophet (pbuh) said: "husbands are obliged to provide food and clothing for their wives on reasonable term.

9. Lack of or failure to adequately provide for one's wife constitute a ground for divorce.
10. Abu zanad was reported to have asked Saeed Ibn Musaib for a ruling on a person has no ability to provide for his wife, could they be separated? Ibn Musaib said 'yes'. Abu Zanad asked whether that was sunnah. Ibn Musaib said ' yes it is sunnah to separate such couple. Ref: the Islamic Jurisprudence and its evidences by Prof Dr Wahba Al Zuhaily Vol 9 pp 7042 - 7045
11. Article 88 of the Islamic Charter on Family [ICF] provide lack of provision is one of the grounds a wife can file divorce proceedings.

It is the wife's right to request divorce if her husband refuses to provide financial support for her wife or if is absent for a long time and there is no news from him or if he is lost or imprisoned for a long period of time and does not have any apparent wealth from which she can spend. She may request divorce if she is harmed by his absence from her, and this right is subject to the regulations and stipulations mentioned in the rulings of Shariah.



12. Art 88 ICF, [The Islamic charter on Family is published by the International Islamic Committee for women and Child IICWC]
13. Accordingly the prayer for dissolution of the marriage is hereby granted. The parties' marriage be and is hereby dissolved with effect from April 28, 2016 same as 20th Rajab 1437 AH Divorce certificate to issue.

No orders as to costs.

DATED AND DELIVERED AT MOMBASA ON 28TH APRIL 2016.

ABDULHALIM H. ATHMAN

PRINCIPAL KADHI

In the presence of

Petitioner

Defendant

