



**AAAN v MJK aka SJK (Civil Case 50 of 2014) [2015] KEKC 45 (KLR) (2 April 2015) (Ruling)**

*AAAN v MJK a.k.a. SJK [2015] eKLR*

Neutral citation: [2015] KEKC 45 (KLR)

**REPUBLIC OF KENYA  
IN THE KADHIS COURT AT MOMBASA  
CIVIL CASE 50 OF 2014  
AH ATHMAN, PK  
APRIL 2, 2015**

**BETWEEN**

**AAAN ..... PLAINTIFF**

**AND**

**MJK AKA SJK ..... DEFENDANT**

**RULING**

1. This is plaintiff's Notice of motion dated 10th February 2015 for orders:
  1. That the court parties' consent entered on 21st May 2014 be set aside.
  2. That the main suit be set down for hearing and thereafter judgment entered.
  3. Cost
2. The plaintiff averred that the since they entered the consent agreement, the defendant never complied with terms of the agreement, that he deserted her, never provided for her and mistreats her.
3. The defendant deponed that the plaintiff had undertaken to change her behaviour but did not making re union impossible. He further deponed that the plaintiff is inhuman, immoral, intentionally creates to frustrate his marriage with his other wife, practices witchcraft harming him and the children.

**Issues**

4. The issues for determination in this application is whether or not the consent agreement should be set aside and case re-opened.



## Brief Facts

5. The plaintiff had filed for divorce, custody and children maintenance, Mut'a compensation and share of the joint business. At pre trial, the court found the plaintiff had actually been divorced by the defendant but wanted reconciliation and helped the parties to reconcile. They recorded a consent agreement on 21st May 2014 . It provided that the parties remarried, the plaintiff to stop leaving matrimonial home without defendant's consent and defendant to stop deserting the plaintiff and to be fair to his wives. It is this consent, the plaintiff seeks to be set aside and proceedings re-opened.

## Submissions

6. The plaintiff submitted the defendant accuses her and her parents of witchcraft, does not provide for her and the child and has not gone to live with her since the consent agreement was adopted by court. She still wants the marriage to work but want the defendant to be implored to take his marital and parental responsibilities.
7. The defendant insisted he cannot live with the plaintiff and actually pronounced divorcing her in court. He submitted the children are in boarding school and is ready to provide for the one in the custody of the plaintiff.

## Analysis and Findings

8. The matter having been decided by consent should not be re-opened. However in a matrimonial matter such as this, the key objective if the court is to solve the key issues in dispute as it involves lives of spouses and minors. The court facilitated reconciliation, apparently the agreement lasted for a short while and problems persisted in the marriage. Muslim spouses have three chances to re marry after divorce.

‘The divorce is twice, after that either you retain her on reasonable terms or release her with kindness..’ Qur’an: Baqarah: 2: 229

9. Where the objectives of marriage as envisaged in Qur’an: Rum : 30: 21 are no longer tenable, spouses should divorce on good terms as a measure of last resort.

‘And of His signs is that He has created for you from yourselves mates that you may find tranquility in them; and He placed between you affection and mercy. Indeed in that are signs for a people who give thought’.

10. Although the plaintiff had pleaded for dissolution of the marriage, she actually only wanted the defendant to be fair to her and take his responsibilities. Unfortunately, the defendant had no intention of taking his wife back on reasonable terms. He did not live with her, for more than ten [10] months since the consent agreement was adopted. He reiterated not wanting her and actually pronounced divorcing her in open court. Once pronounced and / or written by husband, Under Islamic law, divorce becomes effective. Consequently I find the marriage is irretrievably broken and plaintiff divorced by the defendant [2nd divorce] with effect from 16th March 2015. Divorce certificate to issue.

The plaintiff is entitled to edda maintenance under Qur’an: 2:241

‘And for divorced women maintenance (should be provided) on reasonable scale. This is a duty on al Muttaqeen (the pious).

11. I award her KES 4,000.00 per month for three months [KES 12,000.00] as edda maintenance.



12. The application to re-open the proceedings is granted. The issue of divorce is spent. The following issues shall proceed to trial :

Mut'a compensation Costs be in the cause.

Orders accordingly

**DATED AND DELIVERED AT MOMBASA ON 2ND APRIL 2015**

**ABDULHALIM H. ATHMAN**

**PRINCIPAL KADHI**

**In the presence of,**

Mr. Yusuf K. Abdulrahman, court assistant

Plaintiff

Defendant

