



NAM v ARA (Civil Case 168 of 2014) [2015] KEKC 25 (KLR) (28 May 2015) (Judgment)

NAM v ARA [2015] eKLR

Neutral citation: [2015] KEKC 25 (KLR)

**REPUBLIC OF KENYA
IN THE KADHIS COURT AT MOMBASA
CIVIL CASE 168 OF 2014
AH ATHMAN, PK
MAY 28, 2015**

BETWEEN

NAM PLAINTIFF

AND

ARA DEFENDANT

JUDGMENT

1. The plaintiff claims the defendant did not pay her dowry, that he was violent, cruel and severally assaulted her resulting to head fracture and bleeding needing medical treatment in India. She claims the defendant agreed to give out his house to be sold to finance her treatment but reneged on his agreement and refuses to handover the house. She prays for:
 1. Divorce certificate
 2. Dowry, past and eddat maintenance
 3. [Refund for] Electrical items the defendant sold.
 4. Sale of the house for her medication
2. The defendant denied the plaintiff's claims. He specifically denies having agreed to sale his family house to finance plaintiff's medication.
3. The parties were married under Islamic law on September 5, 2012 at Mombasa. On July 8, 2014, the defendant divorced her. The parties recorded the following consent on September 24, 2014:
 1. The parties are divorced w.e.f. July 8, 2014
 2. Defendant to pay dowry KES 45,000.00
 3. Defendant to pay the plaintiff KES 45,000.00 being edda maintenance



4. Defendant to pay the plaintiff KES 25,000.00 being refund of her electrical items sold by defendant
 5. That the defendant shall treat the plaintiff having caused her injuries.
 6. No orders as to costs
 7. The issue of the house to go trial.
4. The consent was adopted by court. The only issue remaining for determination is whether or not the defendant entered a valid agreement to have the suit house without land on Plot No. [...] at Kisauni sold to cater for plaintiff's medication.
 5. Plaintiff's evidence is AAK, her mother [PW1] and the sale agreement dated March 24, 2014. PW1 testified she heard the defendant say he had given the house to the plaintiff. However under cross examination she said she did not know issues relating to the house. Evidence adduced in court show although the agreement is commissioned by an advocate, It was not signed before him. The defendant never appeared before him to append his signature on the agreement. The defendant denies the signature is his. There is no evidence that the house belongs to the defendant to determine that he had *locus* to execute the alleged agreement.
 6. Mr Hamza submitted we have no jurisdiction to adjudicate on matters of agreements. This was an agreement in a marital dispute between two Muslims where the couple have divorced. The agreement is part of the divorce dispute. We have jurisdiction to hear and determine such disputes. However in this case there document has so many inconsistencies and cannot support the agreement of transfer or sale of the house to finance plaintiff's medication. The claim of the agreement is dismissed for lack of sufficient proof.
 7. Having said that, the defendant did, through consent entered and adopted by court, admit having caused the plaintiff's injuries and undertook to treat her. The plaintiff had visibly sustained serious injuries. I direct that the defendant pays the plaintiff KES 500,000.00 to finance her treatment.

Orders accordingly.

DATED AND DELIVERED AT MOMBASA ON 28TH MAY 2015.

ABDULHALIM H. ATHMAN

PRINCIPAL KADHI

In the presence of

Mr. Yusuf K. Abdulrahman, Court assistant

M/S Mwanhunga Mtana & Co. for plaintiff

Mr. Hamza for defendant

