



REPUBLIC OF KENYA
IN THE KADHI'S COURT AT NAIROBI
MILIMANI COMMERCIAL COURTS
DIVORCE CAUSE NO. 221 OF 2013

M OPETITIONER

VERSUS

A G RESPONDENT

J U D G M E N T

The petitioner in this divorce cause has petitioned for dissolution of marriage that was solemnized between her and the respondent on 10th August 1983, a share in matrimonial home and any other relief that the court may deem it fit. Subsequently they were issued with Marriage Certificate by a presiding registrar of marriage at Lamu.

The said union was blessed with two issues namely;

1. F A - born in November 1996.
2. M A - born in 1987.

This petition was not defended and proceeded by way of undefended cause on 14th July 2015.

During the hearing, the petitioner gave evidence and reiterated the particulars of cruelty and negligence as contained in the petition. According to the petitioner, the Respondent has been treating her in the manner which is not expected to be meted out from a spouse to another spouse in Marriage. That throughout the subsistence of marriage the respondent has been rude and physically abusive. She further stated that the respondent has been reluctant in contributing to matters affecting the development of the family.

I have given due consideration to the application and the ground it's based on *vis a vis* the defence, the respondent. The court's attention was drawn to Holy Quran chapter 2 v. 231 wherein it is stated that.

"....either take them back on reasonable basis or set them free on reasonable basis but don't take them back to hurt them...."

The court's attention was also drawn to Ash-shawkanii's "*Fat-hul Qadiir*" Vol. 3 pg 21 where it states that.

Divorce has been allowed in Islamic Law as a remedy in incompatible union"

There is evidence adduced under oath by the petitioner, that the respondent was on several occasions

cruel to the petitioner. This is manifest in physical and verbal abuse and negligence. This conduct caused mental and psychological torture to the petitioner. There is evidence that the parties are no longer living together in harmony. There is evidence that the respondent is not willing to iron out issues affecting his marriage

It's the view of the court that, Divorce since its disintegrate the family union is of course a social evil, in itself but it's a necessary social evil. It's better to wreck the unity of the family than to wreck the future happiness of the party by bonding them to a companionship that has become odious!

In present case it is a common ground that the existence of pre- emptory cause, particularly, assault and even a reasonable apprehension of violence render the conjugal union impossible. In short, the marriage is in existence in name and nothing more. It is a shell and hence it serves no useful purpose for it to stand

I therefore find that the Respondent was cruel to the Petitioner in his total cruelty and negligence to the petitioner.

On 24th March 2015 petitioner and respondent presented before this court copy of a consent agreement asking this court to adopt the same.

In the premises, there being no response to the application and on the evidence adduced by the applicant, I find for the applicant. Accordingly, judgment is entered as prayed against the respondent with consent agreement adopted in the following terms:-

- i) A decree is granted for the dissolution of the marriage between the petitioner and the respondent.
- ii) A divorce certificate be issued forthwith.
- iii) The respondent shall transfer the matrimonial property situate at Lamu to the petitioner.
- iv) The respondent shall surrender a sum of US \$ 12,000/- and a gold Jewellery amounting to US\$ 2,000/-, which is under his possession, to the petitioner within a period of 12 months from the date of this judgement.
- v) The respondent shall provide accounts and information relating to a matrimonial property situate at Nairobi to the petitioner monthly.
- vi) No order as to Costs.

Dated, Delivered and Signed at Nairobi this 29th day of July 2015.

Hon. A. I. Hussein

Kadhi .

In presence of;

Petitioner

Respondent