



**REPUBLIC OF KENYA**  
**IN THE KADHI'S AT NAIROBI**  
**MLIMANI COMMERCIAL COURTS**  
**MISC. CAUSE NO. 53 OF 2015**

S S.....APPLICANT

VERSUS

H A.....RESPONDENT

**JUDGMENT**

By an application dated 3rd June, 2015, the Applicant this court for the official dissolution of the marriage between him and the respondent; he also sought for divorce certificate. The application is supported by an affidavit sworn by the applicant on 3rd June, 2015.

The background is that the applicant and the respondent wedded in Nairobi on 1<sup>st</sup> October 2010 in accordance with the provisions of the Mohammedan Marriage and Divorce Registration Act (Cap.155). The couple established their matrimonial home in Eastleigh, Nairobi. They were not blessed with any issue.

The applicant's case is that the marriage has been rocky and has irretrievably broken down on account of the respondent's extreme fault, leading to a unilateral dissolution .

The respondent did not file any reply within the required time though she was served with the summons to enter appearance. An affidavit of service of the process server is filed on the court record.

When the matter came up for hearing on 16th June 2015, there was no appearance for the responded and matter proceeded by way of undefended cause.

The applicant gave evidence on oath, the evidence that was corroborated by one witness and on 10th November 2010 he did granted the respondent one talaq orally in front of three witnesses on the account that their marriage was not peaceful and that the respondent got married to another man in the same year.

He further testified that due to ignorance the said talaq was never registered within the requisite period and he prayed for the same to be registered and be issued with a divorce certificate.

The foregoing evidence is not denied or rebutted by the respondent. The applicant's case has been subsequently proved before me to the required standard by the applicant. Besides, there are case decisions that a party who has not filed a defence is deemed to have admitted the allegations.

Looking at the evidence in totality, this call for this court to shed light on the validity of unilateral divorce under Islamic law in Mulla on Principles of Mahomedan Law (Nineteenth Edition, 1990) states vide

para 310:-

"310. Talak may be oral or in writing. \_\_\_ A talak may be effected (1) orally

(by spoken words) or (2) by a written document called a talaknama .

(1) Oral Talak. \_\_\_ No particular form of words is prescribed for effecting a talak. If the words are express (saheeh) or well understood as implying divorce no proof of intention is required. If the words are ambiguous (kinayat), the intention must be proved (e). It is not necessary that the talak should be pronounced in the presence of the wife or even addressed to her.

In *Wajid Ali v. Jafar Husain* (1932) 7 Luck, 430, 136 I.C. 209, ('32) A.O.34],

the court stated that "the intention must be proved".

In Dr. Tahir Mahmood's 'The Muslim Law of India' (Second Edition, at pp.113119), the basic rule stated is that a Muslim husband under all schools of Muslim Law can divorce his wife by his unilateral action and without the intervention of the Court. This power is known as the power to pronounce a talaq.

Although, My judicial conscience is disturbed with Muslim husband who abuse unilateral power to inflict instant divorce which doesn't accord with Islamic injunction.

It's a popular fallacy that a Muslim male enjoys under Sharia unbridled authority to liquidate the marriage without a reasonable cause.

Islamic law forbids a man to seek pretexts for divorcing his wife , so long as she remains faithful and obedient to him. "..... ***if they (namely women) obey you, do not seek a means against them'***. **Q;Chap. IV:34**

The Islamic law gives to the man primarily the faculty of dissolving the marriage, if the wife, by her indocility or her bad character, renders the married life unhappy; but in the absence of serious reasons, no man can justify a divorce, either in the eye of religion or the law. If he abandons his wife or puts her away in simple caprice, he draws upon himself the divine anger.

I am satisfied that the applicant has proved his claim against the respondent to the required standards. 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 for the following order:-

- i. A divorce certificate be issued forthwith.
- ii. No order as to Costs.

**Dated, Delivered and Signed at Nairobi this 23<sup>rd</sup> day of July 2015.**

Hon. A. I. Hussein

**Kadhi II.**