



REPUBLIC OF KENYA

IN THE KADHIS COURT AT GARSEN

CIVIL CASE NO 30 OF 2015

1. FSK..... 1ST PLAINTIFF

2. S K W 2ND PLAINTIFF

VESUS

1. D O U..... 1ST DEFENDANT

2. O U 2ND DEFENDANT

JUDGMENT

1. This is a DIVORCE matter. The plaintiff through her plaint dated 8th July 2015 prays for

1. Dissolution of the marriage.
2. The payment of Mahr.
3. Costs any other relief the court may grant.

2. The plaintiff claims the 1st defendant married her in DECEMBER 2013 under Islamic law and celebrated in the Orma traditions and customs. The two defendants denied the 1st plaintiff her dowry and have also deserted her from the third month of their marriage. She does know that the husband is in Mombasa working but has never bothered to come for the reconciliations. He doesn't communicate or provide for her.

3. The defendants were served they entered appearance and put a defence. The 1st defendant made person appearance on the pretrial day and infact admitted all the contents of the plaint.

4. It is worthy to note that the defendants did not make appearance on the hearing day despite having been served three times with the hearing notices. They were seen in Garsen town frequently but they didn't make it to court. The matter proceeded ex-parte under order 12(2) (a). Civil procedure rules which provides: if on the day fixed for hearing, after the suit has been called on or hearing outside the court, only the plaintiff attends, if the court is satisfied : (a) that the notice of hearing was duly served, it may proceed ex parte.

5. The parties were married under Islamic Shariah in December 2013. They are not blessed with any child from their marriage. The plaintiffs' claims in chief are that the first defendant without due reason and justification deserted the 1st plaintiff on the third month and has not provided, cared, and even sort to communicate to the plaintiff in person as his wife for a period of more than a year. The 2nd defendant duped the 2nd plaintiff on dower and complicated the whole issue leading to its escalation. Their only request was for the two defendants to pay the 1st plaintiffs' dower and be taken back to her matrimonial home. That she had no issue with the husband. The husband admitted all the claims but told the court on pre trial that the mandate to pay the same was on the shoulder of the father.

6. The court issued hearing notice to the father and set a date to compel the defendants pay the four (4) goats or twelve thousands to end the issue but they never appeared nor even come to explain how they could pay as they took back their wife.

7. The main issue for determination in this matter is whether or not the plaintiff is entitled to dissolution of the marriage.

8. The plaintiff called two witnesses, Salad Kulisa Wario (PW1) and Abdulla Guyo Jilalo . The guardian father and biological father, they are the source of the plaintiff's history and confirms the plaintiff's claim of desertion. Says it's over a year and 3 months. They also confirmed the fact that the matter revolves around the failure of payment of MAHR. I find as fact the defendant's desertion of the plaintiff since 2014. This

situation has become rampant in this area and the parents should more vigilant on the prospective husbands of their daughters to ensure that sunnah is adhered to before marriage and proper arranged and agreement and commitments are all aligned. The plaintiff was very ready to return to her husband but the husband has demonstrated that he is not willing to take her back or even on his own effort to pay the dower. The court pleasantly encouraged him to come even empty handed but with several notices he returned to Mtwapa where he works as a care taker.

9. The marriage lacks basic wants and requirements of marriage. They have been living separately for more than one year.

The objects of marriage as envisaged in Qur'an: Rum: 30:21 are tranquility, love and affection and mercy between spouses.

'And among His signs is this, that he has created for you your wives from among yourselves that you may find repose in them and He has put between you affection and mercy. Verily, in that are indeed signs for men of sound knowledge'. Rum 30: 21

Islam further provides for a maximum of four months to resolve disputes. It is the period a wife can withstand lack of conjugal rights. Extension of this period results to her enslavement or could put her piety to great test, which infringes on her religious rights

'those who take oath not to have sexual intercourse with their wives must wait for four months, then if they return (change their minds in this period) verily Allah is oft forgiving, most merciful' Al Baqarah: 226

Desertion not only hurts ones wife and children but exposes them to risks on their livelihood and piety it's a ground among other for a Muslim marriage to be dissolved. It also infringes on their marital and individual rights.

The plaintiff is (22) years old. She has been deserted by her husband for ONE (1) years. Accordingly I grant the plaintiff's prayer for dissolution of the marriage. The parties' marriage is hereby declared DISSOLVED with effect from 7th October, 2015 corresponding with 25th DhulHijjah1436 A.H.

In summary, the following have been ordered;

1. The marriage of the parties is hereby declared and pronounced dissolved as at today that is as from today 7th October, 2015 corresponding with 25th DhulHijjah1436 A.H Divorce certificate will be issued after completion of the Eddah. The eddah is one month. It will end on 7th November, 2015. Kshs 200/= will be paid for the same.

2. We know and understand that its compulsory for the husband to pay the Mahr named as 4 goats at the rate of 4,000/= each equal to sixteen thousand only (16,000)

3. The defendants have full knowledge of the court matter but choose to ignore the court. Several attempts to call them bore no fruits, they refused, declined to show up making it clear that they is rude or despise the process of this court. I hereby order that they be availed immediately on being served with this judgment. The officer in charge Witu police station should comply with this order by ensuring they appear personally or pays the above mentioned monies to the petitioners' account. Which is totals to 26,000/=.

6. Cost to the defendants kshs.10, 000/=.

Dated on 14th September 2015.

Delivered and signed on 7th October, 2015.

RASHID K. OTUNDO

Resident Kadhi.

Court Assistant Osman Sheikh Osman

Plaintiffs present

Defendants absent

7th October, 2015