



**S T M v R M D (Civil Case 202 of 2015) [2015] KEKC 41 (KLR) (22 October 2015) (Judgment)**

*STM v RMD [2015] eKLR*

Neutral citation: [2015] KEKC 41 (KLR)

**REPUBLIC OF KENYA  
IN THE KADHIS COURT AT MOMBASA  
CIVIL CASE 202 OF 2015  
AH ATHMAN, PK  
OCTOBER 22, 2015**

**BETWEEN**

**STM ..... PLAINTIFF**

**AND**

**RMD ..... DEFENDANT**

**JUDGMENT**

1. The plaintiff through his plaint dated July 22, 2015 prays for the defendant to be ordered to return to the matrimonial home in Buxton - Mombasa or Khul'u compensation, damages and costs.
2. The plaintiff claims the defendant deserted the matrimonial home and unlawfully married another man while still wedded to him. He claims he has tried to talk towards her returning to him but she has refused conciliation.
3. The defendant claims the plaintiff never respected her, left her without maintenance for long periods, deserted her for four months and sold the furniture leaving without a bed to sleep on. She claims she was compelled to return to her parents when this problem persisted for seven months, that she got unwell, he was called to resolve to their dispute but did not come with his relatives as agreed and refused to grant her divorce when she requested. On conciliation effort, the defendant admits she refused to go to sharefa center due to the demand for Kes 150,000.00 in order to grant the divorce. She contends the marriage is not workable, they have separated for six years and that the plaintiff has not paid her dowry.
4. The parties were married under Islamic law on October 19, 2003. The marriage was not registered. They are both Muslim reverts. The plaintiff is a [particulars withheld], the defendant works in [particulars withheld]. Their matrimonial home was in Buxton. The plaintiff hails from Ukambani, the defendant from Rabai.

The issues for determination in this matter are:



The legality of the second marriage

5. The defendant admitted she is legally married to the plaintiff and that he did not divorce her. She also admits to have married again to one R K on April 17, 2015. I have examined the marriage certificate [Certificate No ... issued by Sheikh Hassan Suleiman] it indicates the wife was virgin. It means she had not disclosed to the Sheikh and / or the assistant registrar of marriages, the fact she had been married and has not been divorced. The plaintiff had demanded divorce from the plaintiff, when he refused she went on to lie about her status and decided to marry to another man, effectively taking the law into her own hands.
6. Islam does not allow polyandry, a lady can only be married to one husband at a time. Only after she is divorced and after expiry of edda period can she married to another man. Separation of any length of time is immaterial, divorce is only effective upon pronouncement by the husband or the court with necessary jurisdiction upon following due process. The second marriage done on April 17, 2015 is hereby declared null and void. The marriage certificate No ..., S/No ... is hereby cancelled.
7. The defendant knowingly lied or failed to disclose that she is somebody's wife to the sheikh conducting the marriage and / or assistant registrar. It is a criminal offence. This court lacks jurisdiction to punish on criminal matters. The plaintiff has leave to institute criminal proceedings against the defendant in the magistrates court.
8. Whether or not the defendant should be ordered to return to the matrimonial home.
9. The defendant claimed the plaintiff was not providing for her and denied her her conjugal rights. Under cross examination it was clear the couple had been meeting regularly and having intercourse as legally wedded couple even as late as about one week before she got in the second marriage. The defendant called no witness and could not demonstrate the plaintiff's lack of provision and maintenance. The defendant is legally the wife of the plaintiff. She should respect and follow his directions. She ought to return to the matrimonial home and the plaintiff shall provide for her accommodation, sustenance and healthcare. In the current circumstances, the party's cannot have intercourse until the defendant gets her first menstrual cycle, so that if she has conceived from the second marriage, the paternity of the child can be ascertained. I am cognisant that two human being cannot be forced to live together. However the law must be respected observed. Under normal circumstances, the husband in such situations would divorce the wife for having put his standing in disrepute but we cannot force him to divorce her, if he still loves her even after knowing what she did.  
  
It is reported that a man told the prophet [PBUH] that I suspect my wife is not faithful if seduced, the prophet told him, 'divorce her', he said, 'I love her', the prophet [pbuh] said, 'live with her'.
10. Wives have right to divorce upon following due process. If one feels she no longer can grant her husband her marital rights and / or she no longer loves him she can on refund of the dowry given or relinquishing same if it was not yet given.
11. Accordingly, the defendant is ordered to return to the matrimonial home in Buxton within one week and the parties to observe their marital duties and obligations.

Orders accordingly.

**DATED AND DELIVERED AT MOMBASA ON 22ND OCTOBER 2015.**

**ABDULHALIM H. ATHMAN**

**PRINCIPAL KADHI**

In the presence of



Mr. Yusuf K. Abdulrahman

Plaintiff

Defendant

