



REPUBLIC OF KENYA



**KENYA LAW**  
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**HID v SAM (Civil Appeal E003 of 2025)**  
**[2026] KEHC 1942 (KLR) (19 February 2026) (Judgment)**

Neutral citation: [2026] KEHC 1942 (KLR)

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT AT GARISSA**  
**CIVIL APPEAL E003 OF 2025**  
**JN ONYIEGO, J**  
**FEBRUARY 19, 2026**

**BETWEEN**

**HID ..... APPELLANT**

**AND**

**SAM ..... RESPONDENT**

*(Being an appeal against the judgment of Hon. Said Hamisi Bedzenga (S.P.K.)  
delivered on 20.02.2025 in Divorce Cause No. E052 of 2024 at Dadaab)*

**JUDGMENT**

1. The respondent (plaintiff) moved the trial Kadhi's court Dadaab vide undated plaint filed in court on 12-7-2025 seeking dissolution of her marriage with the appellant on grounds that; the appellant had failed to provide maintenance to his family; had deserted his family and further, had deprived her of conjugal rights for a period of two years.
2. She averred that their marriage was blessed with four children and that the 2 cows agreed as dowry was not paid. She stated that there were misunderstandings between her and the appellant for two years owing to lack of respect, poor relationship and communication.
3. The respondent through the firm of Muhumed & Associates Advocates entered appearance and filed a defence dated 05.08.2024 wherein he denied the allegations by the respondent. To the contrary, he urged that he still loved his wife and therefore, the suit be dismissed or in the alternative be referred to alternative dispute resolution mechanism.
4. Briefly, PW1, SAM, testified that she is a refugee residing in Hagadera. She stated that the appellant divorced her while she was in maternity during the birth of their last born child. She averred that the divorce arose from assault and lack of maintenance and that, the defendant threatened to take her to his brother's home where she would never be seen again.



5. That three days after their divorce, the appellant claimed to have reinstated her as his wife on condition that past events be forgotten and that he would provide maintenance which promise he failed. She averred that she later became pregnant, suffered heavy bleeding during childbirth, had blood transfusion but with no support from the defendant except for Kes. 2000/-. She stated that she relied on business colleagues for assistance. That with the baby only fifteen days old, she had to sell miraa to provide for the child.
6. She testified that when the baby was five months old, the appellant sought forgiveness, claiming he was ill and was due to be taken to India for treatment. That through the intervention of community members, she forgave him only to discover that he had married another woman. She alleged that the second wife took naked photographs of her children and circulated them leading to a fight between the two. She said she was arrested through the involvement of the co-wife's sister, a police officer, but was later released.
7. She testified that she filed a case with the child protection office, where the appellant promised to pay Kes. 3000/- in child maintenance but failed to do so. She stated that elders subsequently urged the appellant to divorce her formally, but he refused thus necessitating this suit. She prayed that the marriage be dissolved and that custody of the children be granted to her. It was her case that she was able to provide for her children.
8. PW2, SHH confirmed that it was the respondent who sought for divorce from the appellant which was granted but through his effort and sheikhs they reunited and remarried again. That the two subsequently got a baby after their reunion. He confirmed that the two again got into afresh dispute which gave rise to the suit herein.
9. PW3, NS stated that he was familiar with the dispute between the respondent and the appellant. He said that the first child was born in the refugee camp, at a time when house rent was Kes. 3,000/-. He explained that the couple later moved to another house after purchasing a plot from Abshir of the Ogaden tribe for Kes. 250,000/-, where they lived without problems initially. It was his evidence that all the other children were born in that house.
10. He testified that after the birth of the last child, the appellant lost his job and faced challenges in providing maintenance. That the appellant had seven children in Garissa whom he was supporting. That although blessed with many children, he discriminated against some of them. He added that for two years the appellant did not provide any household bills. He explained that the matter was taken to the children's officer, Mr. Omar, who instructed the appellant to pay Kes. 5,000/- monthly, but the appellant claimed he had no job and that his income was insufficient even for his Garissa family.
11. He stated that as uncles they decided to assist by buying food and paying rent, but the appellant's relatives said they were unable to resolve his issues. He said they eventually sought assistance from the court and the local kadhi also advised them to pursue the matter in court. He concluded that the appellant made no effort to retain his marriage.
12. DW1, HID testified that he married the respondent in 2017, during which time she was living with her two sisters. He stated that the respondent had previously been divorced by two men, each of whom had left her with one child. He told the court that after marrying her, he purchased a plot and built a house. He said that the respondent later requested to bring her father from Somalia, claiming that he was so old and sick, but when the father arrived, he appeared strong and healthy. He reported that during this period, he and the respondent were blessed with three children.
13. He stated that later the respondent and her father planned to expel him from the plot. He explained that the house had three bedrooms, one of which the respondent locked for herself, another she gave



- to her sisters and the third she gave to her father, leaving him with no choice but to stay outside for 21 days. He testified that the respondent threatened him with a knife, forcing him to escape to his family in Garissa.
14. It was his testimony that the respondent sent him threatening WhatsApp messages, including threats to kill him and that she reported him to Hagadera police station. He added that his second wife in Garissa saw the threatening messages and reported them to Garissa police station, which forwarded the matter to Hagadera. He said the respondent was arrested, but he forgave her.
  15. He explained that thereafter, elders were engaged to seek a solution. That his father, who was ill at Bura, sent another elder with Kes. 50,000/- to assist in resolving the matter. He stated that they approached the respondent's elders, but her father said they could not resolve the dispute and instead demanded that the plot be given to the respondent and that she be divorced. He stated that when they requested to see the children, the elders rejected the request. He added that the respondent's father claimed the shopping was witchcraft and insisted on selling the plot.
  16. He testified that he had bought the plot for Kes. 250,000/-, of which Kes. 150,000/- came from his own pocket and Kes. 100,000/- was borrowed. That the respondent did not contribute anything. He concluded that the dispute originated from the issue of the plot and maintained that he was a responsible man.
  17. Upon deliberating on the evidence and the law, the trial court via a judgment delivered on 20.02.2025, allowed the respondent's prayers by dissolving the marriage between the parties herein.
  18. Aggrieved by the said judgment, the appellant proffered a memorandum of appeal dated 21.02.2025 on general grounds arguing that the learned Kadhi erred in law and fact by coercing him to provide Kes. 5,000 /- to the respondent and further, that the court had failed to give consideration to his case despite putting up a strong case.
  19. The appellant sought for orders that:
    - i. The appeal be allowed.
    - ii. That the subordinate court's judgment delivered on 20.02.2025 be set aside.
    - iii. That this Honourable Court issues any other such order that it deems just.
    - iv. Costs hereof be provided for.
  20. The appeal was canvassed by way of written submissions.
  21. The appellant filed submissions dated 5-6-2-25 in which he contended that he was in love with the respondent and that in the best interest of the children they should be put under his custody. He submitted that the respondent went to court with dirty hands hence deserving the orders sought.
  22. On the other hand, the respondent in opposing the appeal filed submissions dated 22.06.2023 wherein she contended that the appeal had no merit. That the appellant did not demonstrate that he was deserving of the orders sought and therefore, this court was urged to dismiss the appeal.
  23. This being the first appellate court, it is thus bound to reconsider, re-evaluate and re-assess the evidence tendered before the trial court together with the assessors' opinions and arrive at an independent determination and or conclusion without losing sight of the fact that the trial court had the advantage of seeing and listening to the witnesses to be able to assess their demeanour. [See *Selle and another v Associated Motor Boat Co. Ltd and others* (1968) E.A 123 and *Peters v Sunday post limited* (1958) E.A 424].



24. I have considered the record of appeal, grounds of appeal and the submissions by both parties. The only issue for determination is; whether the marriage between the appellant and respondent was properly dissolved.
25. The Court heard the appeal herein with the aid of two assessors pursuant to section 65 (1) (c) of the Civil Procedure Act, which provides for appeals to the High Court from original decree of a Kadhi's Court as follows:
- “ c) from a decree or part of a decree of a Kadhi's Court, and on such an appeal the Chief Kadhi or two other Kadhis shall sit as assessor or assessors.”
26. For the hearing of this appeal, this court sat with Hons. Hassan O. Daffa (P.K.) and Ali Dadacha (P.K.). In their joint opinion dated 22.01.2026 they observed that the matter had been pleaded as a divorce cause and the trial court had recorded prolonged grounds for divorce as; separation, lack of communication, absence of maintenance and deprivation of conjugal rights. It was noted that these findings were consistent with Islamic law principles, which prohibit harm and permit dissolution where reconciliation fails and the marriage no longer serves its lawful objectives.
27. The assessors emphasized that Islamic law requires spouses to live together in kindness and prohibits harm and where harm persists, dissolution may be granted. Reference was made to Quran 4:19; Quran 30:21 and further, the case of A.M.N. v B.M.M. [2014] eKLR where the court emphasized that the purpose of dissolution is to relieve parties from a union that no longer fulfills the purposes of marriage and to protect their dignity and wellbeing. On that basis, the dissolution order was considered supported and not open to appellate interference.
28. In conclusion, they recommended that the appeal be dismissed, the dissolution order upheld, and all issues relating to custody, maintenance, access, education, or paternity be declined, as they were neither pleaded nor determined by the trial court.
29. In as much as this court is not bound by the Kadhis findings, it is important to note that the court has considered the same for guidance in concluding the judgment and orders made herein.
30. Article 45 (2) of the constitution provides that:
- Every adult has the right to marry a person of the opposite sex, based on the free consent of the parties.
31. Similarly, section 3 (1) of the Marriage Act describes 'marriage' as follows:
- Marriage is the voluntary union of a man and a woman whether in a monogamous or polygamous union and registered in accordance with this Act.
32. In the instant case, the respondent urged that the appellant had failed to provide for his family and further, that she had been denied conjugal rights noting that the appellant had been away for over two years. The appellant on the other hand did not deny the said allegation but justified the same by averring that given that the respondent and her family had chased him from their matrimonial home, he had no option but to stay with his Garissa family.
33. The allegations by both parties against each other demonstrated that they were not ready to return to their marriage. From the evidence on record, the couple had perennially lived in disharmony, ever quarreling, no provision for the family, desertion and mistrust. There has been no happiness in this



marriage. In the case of G.O.A v R.A.A (Divorce Appeal E053 of 2023) [2024] KEHC 6842 (KLR), the court had this to say about unsustainable marriages;

“In the instant case, the parties herein had separated for seven years prior to the filing of the divorce petition. The respondent clearly left her matrimonial home and she does not want to be in a marriage with the appellant. In light of the foregoing factors, this court cannot force the parties, especially the respondent to continue in such a union. Marriage being a voluntary union, this court has no powers or jurisdiction to compel the respondent to accept a relationship that has by law, broken down irretrievably, particularly on account of the long separation between the couple”.

34. It is trite that marriage is a social contract which is voluntarily tied and when the uniting ropes are loosened by other factors including but not limited to; adultery where applicable, cruelty, denial of conjugal rights, desertion and lack of love, then, courts should not force such parties to stay together. They should be let loose to choose their happiness elsewhere for life on earth is anchored on happiness and not suffering.
35. In a nutshell, the marriage between the two has miserably failed and the same was properly dissolved. As regards custody and maintenance of the children, the same was not the subject of the proceedings before the trial court. The court did not even make any finding on the same. To that extent, I will not endeavour to delve on the same. Accordingly, the appeal is dismissed and the lower court’s judgment upheld. This being a family dispute, I will order that each party bears own costs

**DATED, SIGNED AND DELIVERED VIRTUALLY THIS 19<sup>TH</sup> DAY OF FEBRUARY 2026.**

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**J.N.ONYIEGO**  
**JUDGE**

