



REPUBLIC OF KENYA
IN THE KADHI'S COURT AT NAIROBI
MLIMANI COMMERCIAL COURTS
DIVORCE CAUSE NO. 44 OF 2015

J S PETITIONER

– VS –

H Y.....RESPONDENT

J U D G E M E N T

This is a petition for divorce filed by one **J S** (herein after 'the Petitioner') against one **H Y** (herein after 'the Respondent') on 12th May, 2015 for a decree for a dissolution of marriage, an order for the custody of the issues of the marriage, an order for the maintenance of the issues of the marriage, an order for mehr and arrears of maintenance during eddat and other reliefs this court may grant.

The background is that the Petitioner's Marriage to the Respondent was conducted in Burundi under the provisions of Islamic law. They cohabited as husband and wife in [*particulars withheld*] and later established their matrimonial home in Nairobi.

The said marriage was blessed with five (5) issues namely:-

- 1. D-K K - 8 years.**
- 2. H O K - 6 years.**

In the Petitioner's assessment, his marriage to the respondent has irretrievably broken down on the ground of negligence and lack of respect towards the petitioner, as particularized in the petition and the only option available to him now is to have it dissolved.

Although the respondent neither entered appearance nor respond to the petition within the requisite time. When the matter came up for hearing on 28th July, 2015 the respondent decided to defend herself orally.

In an answer to the petition the Respondent too sought the dissolution of her marriage on the ground of negligence. The respondent in her submission claims mistreatment from her husband.

She further stated that the reason for her husband negligence was a result of him marrying a second wife.

I have given due consideration to the application and the ground it's based on *vis a vis* the defence, of the respondent. The question that falls for my consideration is:

a) Whether the marriage between the parties has irretrievably broken down.

The court attention was drawn to the Quranic textual elucidation of functional and fundamental ingredients that fuel an ideal marriage among Muslim- tranquility, love and mercy - which have been captured by the Holy Quran chapter 30 v. 21 wherein is stated that.

"And among His Signs is this, that He created for you Mates from among yourselves, that ye may dwell in tranquility with them, and He has put Love and Mercy between you. Verily in that are signs for people who reflect."

The submissions and evidence adduced by the parties, the manner they testified and the demeanor when making submissions and during cross-examination reflect deep-seated tensions between the parties.

Neither party has endeavored to extend a hand of reconciliation and no attempts were made to employ Alternative Dispute Resolution mechanisms before having recourse to judicial separation as envisaged by the Holy Quran Chap 4 v. 35 which says:

" If you fear dissension between them twain (the man and the wife), appoint two arbitrators, one from his family and the other from hers, if they both desire reconciliation, Allah will cause it between them. Indeed Allah is Ever Knowing and Acquainted (with all things).

The court attention was also drawn, to Ash-shawkani'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 that the parties are no longer living together. It's the view of the court that, Divorce since it 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 negligence 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 hereby, in the circumstances allow the petition and grant the divorce; I order the issuance of the Divorce Certificate forthwith.

I make no order as to cost.

It is so ordered.

DELIVERED and SIGNED at Nairobi this 11th day of August 2015.

Hon A .I. Hussein - Kadhi II

In Presence of:

Petitioner

Respondent



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