



**MM v AAA (Matrimonial Case E017 of 2024)
[2024] KEKC 21 (KLR) (17 October 2024) (Judgment)**

Neutral citation: [2024] KEKC 21 (KLR)

**REPUBLIC OF KENYA
IN THE KADHIS COURT AT WAJIR (HABASWEIN)
MATRIMONIAL CASE E017 OF 2024
DA IBRAHIM, SRK
OCTOBER 17, 2024**

BETWEEN

MM PETITIONER

AND

AAA RESPONDENT

JUDGMENT

Introduction

1. This judgment pertains to a matrimonial cause brought before the Kadhi’s Court at Habaswein by the Petitioner, Mr. MM, against the Respondent, Ms. AAA. Both parties are Muslims of sound mind, residing at P.O. Box 118-70201, Habaswein, and were lawfully married under Islamic law.

Procedural History

2. On 15th October 2024, the Petitioner filed a petition , accompanied by a verifying affidavit in compliance with procedural requirements.
3. On 16th October 2024, the Respondent filed her response to the petition, acknowledging the Petitioner’s claims and expressing her willingness to amicably resolve all outstanding issues.
4. Prior to the hearing, community elders intervened to mediate between the parties. Through their intervention, the Petitioner agreed to pronounce one Talaq (divorce) upon the Respondent.
5. Subsequently, the Petitioner tendered a duly signed divorce letter to the Respondent, formalizing the dissolution of the marriage in accordance with Islamic law.
6. With the consent of both parties, a Consent Agreement was prepared and signed, outlining the terms of their separation and settlement.



7. The matter was scheduled for hearing on 17th October 2024. On the hearing date, both parties appeared before the Court, accompanied by community elders and witnesses, and presented the Consent Agreement dated 17th October 2024 for adoption by the Court.

Background

8. The Petitioner and the Respondent entered into a lawful marriage under Islamic law on a date not specified in the pleadings but acknowledged by both parties.
9. During their marriage, the parties were blessed with two children:
 - a. M MM, a minor daughter.
 - b. M MM, a minor daughter.
8. The marriage has been experiencing irreconcilable differences, leading to a breakdown of the marital relationship.
9. Efforts at reconciliation, including interventions by family members and community elders, were undertaken.
10. Upon elders' intervention, the Petitioner agreed to initiate the divorce process by pronouncing one Talaq and formalized it by tendering a duly signed divorce letter to the Respondent.
11. The Respondent consented to the divorce and agreed to the terms proposed by the Petitioner.

Issues for Determination

14. The primary issues for determination by this Court are:
 - a. Whether the marriage between the Petitioner and the Respondent has been lawfully dissolved.
 - b. Whether the Consent Agreement dated 17th October 2024 should be adopted as an order of the Court.
 - c. Whether the terms of the Consent Agreement are consistent with Kenyan law, Islamic law, and the principles from the four schools of Islamic jurisprudence.
 - d. Determination of the rights and obligations of each party concerning maintenance, custody of the children, and division of matrimonial property.

Legal Framework

15. The legal provisions applicable in this case include:
 - a. *Constitution of Kenya, 2010*: Articles 45 (Family) and 170 (Kadhi's Courts).
 - b. *Kadhi's Courts Act*, Cap 11 Laws of Kenya: Sections governing the jurisdiction and procedures of Kadhi's Courts.
 - c. *Marriage Act*, 2014: Provisions on marriage, divorce, and dissolution under Islamic law.
 - d. *Matrimonial Property Act*, 2013: Sections on ownership and division of matrimonial property.
 - e. *Children Act*, 2001: Sections 4 (Best interests of the child), 6 (Right to parental care), and 83 (Principles for making custody orders).
 - f. Islamic Sharia Law: Quran, Hadith, and scholarly interpretations.



- g. Principles from the Four Schools of Islamic Jurisprudence: Hanafi, Maliki, Shafi'i, and Hanbali schools.
- h. Relevant Case Law: Precedents set by Kenyan courts in similar matters.

Analysis

Jurisdiction

- 16. Article 170(5) of the [Constitution](#) of Kenya, 2010 provides that the Kadhi's Courts have jurisdiction to determine questions of Muslim law relating to personal status, marriage, divorce, or inheritance in proceedings where all parties profess the Muslim religion and submit to the jurisdiction of the Kadhi's Courts.
- 17. Both the Petitioner and the Respondent are Muslims and have voluntarily submitted to the jurisdiction of this Court.
- 18. Therefore, this Court has the requisite jurisdiction to hear and determine this matter.

Dissolution of Marriage

- 19. The Petitioner has initiated the dissolution of the marriage by pronouncing one Talaq upon the Respondent, following elders' intervention and mutual agreement.
- 20. The Petitioner formalized the divorce by tendering a duly signed divorce letter to the Respondent.
- 21. Under Islamic law, Talaq is a legitimate means of dissolving a marriage, recognized by all four schools of Islamic jurisprudence, provided it follows proper procedures.
- 22. The Quran states in Surah Al-Baqarah 2:229:

“Divorce is twice. Then, either keep [her] in an acceptable manner or release [her] with good treatment.”
- 23. The pronouncement of one Talaq allows for the possibility of reconciliation within the Iddah period if both parties agree.
- 24. The Court is satisfied that the marriage has been lawfully dissolved in accordance with Islamic law.

Consent Agreement

- 25. The Consent Agreement presented by the parties outlines the terms of their separation and addresses issues of dowry, monetary compensation, custody of the children, and division of property.
- 26. The Court must examine whether this agreement is lawful, equitable, and in compliance with Kenyan law and Islamic principles.

a. Payment of Mahr (Dowry) and Monetary Compensation

- 27. The Mahr is a mandatory bridal gift from the husband to the wife, as stipulated in Islamic law.
- 28. The agreed Mahr at the time of marriage was two (2) cows, which remains unpaid.



29. The Quran in Surah An-Nisa 4:4 instructs:
- “ And give the women [upon marriage] their [bridal] gifts graciously.”
30. The Petitioner acknowledges his obligation and agrees to fulfill it by paying the Respondent her full Mahr.
31. Additionally, the Respondent contributed Kenya Shillings Fifty-Seven Thousand (Kshs 57,000) towards the construction of their matrimonial home.
32. Under Section 7 of the *Matrimonial Property Act*, 2013:
- “ Ownership of matrimonial property vests in the spouses according to the contribution of either spouse towards its acquisition...”
33. The Petitioner agrees to refund this amount to the Respondent, acknowledging her financial contribution.
34. This arrangement is consistent with the principles of justice and fairness emphasized in Islamic law and Kenyan statutes.

b. Custody of the Children

35. The welfare of the children is of paramount importance.
36. Section 4(2) of the *Children Act*, 2001 provides:
- “ In all actions concerning children... the best interests of the child shall be a primary consideration.”
37. The parties have agreed on the following custody arrangement:
- a. The Petitioner shall have custody of M MM.
 - b. The Respondent shall have custody of M MM.
38. Islamic law places emphasis on the best interests of the child (Maslaha al-Child).
39. According to the Shafi'i and Hanafi schools, the mother has priority in custody of young children unless disqualified.
40. However, mutual agreements between parents are encouraged, provided they serve the child's welfare.
41. Both parties have committed to facilitating reasonable access and visitation rights.
42. The Court must ensure that the custody arrangement does not prejudice the rights and welfare of the children.
43. The Court directs that both parents cooperate in matters of education, health, and general upbringing.

c. Distribution of Matrimonial Property

44. The parties have agreed that all household items and personal property currently in the possession of the Respondent shall remain her sole property.
45. Islamic law recognizes the individual ownership of property acquired before and during the marriage.



46. The Hanbali school asserts that spouses retain ownership of their respective properties unless gifted or jointly acquired.
47. Under Section 14 of the *Matrimonial Property Act*, 2013, contributions may be monetary or non-monetary, including domestic work and management.
48. The Court finds the agreement on property distribution fair and in accordance with both Islamic principles and Kenyan law.

Compliance with Legal and Islamic Principles

49. The Consent Agreement complies with:
 - a. Kenyan Law:
 - the *Constitution* upholds the right to marry and found a family (Article 45).
 - The *Marriage Act*, 2014 recognizes marriages conducted under Islamic law and provides for their dissolution.
 - The *Matrimonial Property Act*, 2013 governs the ownership and division of matrimonial property.
 - The *Children Act*, 2001 protects the rights and welfare of children.
 - b. Islamic Law:
 - The dissolution of marriage through Talaq initiated by the husband is permitted.
 - Payment of Mahr is obligatory.
 - Custody arrangements prioritize the welfare of the children.
 - Property rights are respected.
50. The principles from the four schools of Islamic jurisprudence have been considered, ensuring that the agreement aligns with widely accepted Islamic legal thought.

Conclusion

53. The Court is satisfied that:
 - a. The marriage has been lawfully dissolved through one Talaq pronounced by the Petitioner upon elders' intervention.
 - b. The Petitioner has formalized the divorce by tendering a duly signed divorce letter.
 - c. The Consent Agreement is lawful, fair, and in the best interests of all parties, including the children.
 - d. The agreement complies with Kenyan law and Islamic principles.

Orders

1. The marriage between the Petitioner, Mr. MM, and the Respondent, Ms. AAA, is hereby confirmed as dissolved through one Talaq pronounced by the Petitioner.
2. The dissolution takes effect from 17th October 2024, the date when the Talaq was pronounced and the divorce letter was tendered.



3. The Respondent shall observe the mandatory Iddah period of three menstrual cycles, as required under Islamic law.
4. The Consent Agreement dated 17th October 2024 is hereby adopted in its entirety as an order of this Court.
5. The Petitioner shall pay the Respondent her full Mahr of two (2) cows within 30 days from the date of this judgment.
6. The Petitioner shall refund the Respondent Kenya Shillings Fifty-Seven Thousand (Kshs 57,000) within 60 days from the date of this judgment.
7. The Petitioner is granted custody of M MM.
8. The Respondent is granted custody of M MM.
9. Both parties shall ensure the welfare of the children and facilitate reasonable access and visitation rights.
10. Any disputes arising from custody or visitation shall be resolved amicably or brought before this Court for determination.
11. Both parents have a joint responsibility to maintain their children under Section 24 of the *Children Act*, 2001.
12. The parties shall agree on the sharing of expenses related to education, health, and general welfare.
13. The Respondent shall retain all household items and property currently in her possession.
14. Neither party shall make any further claims against the other regarding property acquired during the marriage.
15. This judgment constitutes a full and final settlement of all claims arising out of the marriage between the parties.
16. Neither party shall have any further claim against the other in respect of the marriage, whether in property, maintenance, or any other matter.

It is so ordered.

DATED, SIGNED, AND DELIVERED AT HABASWEIN THIS 17TH DAY OF OCTOBER, 2024.
HON.DADACHA.A IBRAHIMSENIOR RESIDENT KADHI

In the presence of:

Court Assistant:Najma Farah

Petitioner:MM

Respondent:AA

