



Examining the judicial divorce application under the Kadhis' courts in Zanzibar

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Abstract

The rate of divorce has been increasing extremely in Kadhi's Court in Zanzibar, whereby early marriage along with little marriage knowledge are considered as among main factors for this critical challenge. The aim of this paper is to address the application of judicial divorce under the Kadhis' Courts in Zanzibar. The study used a case study design, whereas a qualitative method was used to collect, analyze and interpret data. Primary data was collected through focus group discussions. A total of 30 divorcees and 15 staff from Kadhi's Court were involved in this data. A non-probability sampling under purposive sampling techniques was applied for selecting respondents for this study. The study found that Fasakh and Khulu were the main judicial devices applied in the courts to end a marriage contract. Many women in Zanzibar are aware of *Khulu* and this trend is strongly associated with a wife's responsibility for the breakdown of the marriage and the return of the dower to her husband. Moreover, the general behavior of wives or husbands contributed to the increasing rate of divorce granted by Kadhis which left no room for mutual adjustment for themselves as well as when the matter reached the Kadhis for reconciliation.

Keywords: divorce, khulu, faskh, marriage, Kadhi's court, Zanzibar

Introduction

Repudiation of a husband is not the only form of dissolution of marriage but the wife under Islamic law may institute divorce at her request before the Sharia court if the marriage does not function properly to avoid further difficulties. A Muslim woman may obtain a decree of divorce through judicial intervention which is usually granted by the Muslim judge and is available at the instance of certain reasons such as failure to maintain the wife, defects on the husband's part, absence of husband, cruelty and insanity (Alidadi, 2006) ^[4].

Demand for divorce from a wife to her husband is always associated with the equal right belonging to her if there is a mismatch between the two either in communications or interactions so that the cancellation of marriage ties is to be taken (Ridhwan, and Syafarruddin, 2016) ^[18]. The decision of a wife to sue her husband is a human right in which Islam gives a woman as a form of maintaining the benefits to her and removing the difficulties. The model of divorce with a wife sues for divorce on her husband including *Khulu* and *Faskh*. In such a situation of ending the marriage bond, Islam put the woman in a similar position that a man given to pronounce Talaq. Normally divorce of this style is associated with reasons which include adultery and lack of maintenance from the husband towards his wife.

In Zanzibar, most of the divorce cases filed by women fall under the jurisdiction of the Kadhi's Court. In 2020 at Mwanakwerekwe Kadhi's Court 770 cases of divorce have been filed whereas 213 cases end up with a divorce. Few cases are set aside by the court where the plaintiff failed to appear before the court to adduce evidence because in Islamic law the one who asserts must prove or the parties have reached an agreement. In many events, it can be viewed that the women filed the case as a last resort after reconciliation has failed and tolerance for several years.

Methodology

This study was conducted in Zanzibar Islands. Zanzibar is a semi-autonomous part of the United Republic of Tanzania (URT) which has two government structures, Tanzania Mainland and Tanzania Islands (Zanzibar). The study was conducted at Mwanakwerekwe Kadhi's Court. The study population involved divorcee and staff from Kadhi's Court. A non-probability sampling under purposive sampling techniques was applied for selecting respondents for this study.

This paper mainly employed a case study research method whereby a qualitative research approach was used aimed at understanding the people's point of view on judicial divorce under the Kadhi's Courts in Zanzibar and ensuring that rich descriptions are gained from gathering the data. Primary data was collected through focus group discussions. The sample size of 45 individuals was involved in this study. The sample includes 30 divorcees and 15 Courts staff. The study used a focus group discussion to gather in-depth information, experience, thoughts and opinion of participants. Three sessions of one-hour discussion were conducted, whereby the moderator's guide was prepared and the researchers facilitated and moderated the discussion to ensure that all topics of interest are covered. The researchers also consulted secondary sources of information such as dissertations, journal articles, conference papers, Government reports, cases and law reports.

Material and discussion

***Khulu* (Divorce initiated by the woman)**

According to Al-Kasani (2019) ^[3] the term "*Khulu*" literally, means extracting oneself in the sense that the husband has released her wife from the marriage contract and the act of accepting compensation from the wife for a money consideration to be given to the husband as an exchange for her relief from a marital tie or a transaction in which compensation is paid by the wife for obtaining her divorce.

In its technical term, *Khulu* is the divorce of husband and wife for compensation paid by the wife to the husband. The following Quranic revelation serves as an authority for the recognition of the dissolution of marriage by *Khulu* in Islam:

"If you (judges) do indeed fear that they would be unable to keep the limits ordained by Allah, there is no blame on either of them if she gives something for her freedom. These are the limits ordained by Allah, so do not transgress them." (Al Quran, Surah Al Baqarah: 229)

This verse permits a wife to redeem herself by giving some consideration to her husband and permits the latter to accept it in exchange for his repudiation when they cannot live according to Allah's will. Morally and religiously, it is reprehensible for a husband to take anything from the wife if actual aversion is on his part. Otherwise, if the aversion is from the wife, it is also morally reprehensible for him to take more than he has given to her.

Studies on marriage and divorce in Islam generally address repudiation by the husband, divorce initiated by the wife is much less well known. This kind of divorce is indeed rare in Muslim societies even though it is authorized by the majority of Islamic legal schools, not only by the Maliki, for example, but also by other schools of Sunni Islamic law, whether Shafi or Hanbali.

Khulu is legalized by the verses of the Holy Quran and the traditions of the Prophet (peace be on him). The holy Quran sanctioned redemption (*Khulu*) as a form of repudiation of marriage as the following:

"And it is lawful for you that you take from women anything of that which you have given them; except when you fear that they may not be able to keep the limit of Allah. And if you fear that they may not be able to keep the limit of Allah, in that case, it is not sinning for either of them if the women ransom herself." (Al Quran, Surah Al Baqarah: 229)

According to Imam Shafi, the verse address both partners who live within the bound of Allah during the subsistence of the marriage and one of them cannot keep the limit of Allah within the bound set by Allah and is considered unable has the point to approach the Court for divorce. According to Al-Jassad (2017) the verse regarding the fear that the two may not be able to keep within the bounds set by Allah, arises when either of them violates his/her marital duties or the right of one or both of them are denied. If that happened, then the women have the same rights as their men and the implication of this can ask her husband to declare a divorce.

In a nutshell, according to the above verse, the Holly Quran allows *Khulu*, and either partner may initiate *Khulu* if he or she thinks that marital rights and obligations cannot be fulfilled properly. While on the side of women the room is also open to apply before Shariah Court for divorce while the Court has the task to determine the ground of friction and harm attributed to the woman and if she is ready to pay compensation to her husband, and the Court can terminate the marriage contract without the consent of the husband when satisfied with the reasons applied before it by the wife's side. In doing so the important caution that is put before the judge affirms the decision that he is to observe that the limits of Allah will not be observed, that is, in their relation towards one another the spouses will not obey Allah and that therefore a harmonious married state as envisaged by Islam will not be possible, then he will grant a dissolution (Serajuddin, 2013) ^[19].

A wife can dissolve her marriage unilaterally only if the right of divorce has been unconditionally delegated to her by the husband in the marriage contract. If such right of divorce has not been delegated then in the ordinary circumstance, a wife can dissolve her marriage by applying for *Khulu* from the Shariah Courts to seek judicial divorce (Barrister, 2020).

As far as the Islamic family law is concerned, the wife is allowed to apply for *Khulu* by filing a civil case before Kadhis' Court in Zanzibar on the sufficient ground that she can no longer able to live with her husband within the parameter prescribed by Allah. *Khulu* is a practice but not common for women in Zanzibar to secure their legal rights. In Zanzibar's Islamic courts, *Khulu* is used primarily as a judicial mechanism for ending a marriage when a judge determines a wife to be responsible for the breakdown of the marriage. Similarly, Stiles (2019) asserted that women apply *Khulu* as a corrective measure when there are no grounds for judicial dissolution through *Fasakh*.

Many women in Zanzibar are aware of *Khulu* and this trend is strongly associated with a wife's responsibility for the breakdown of the marriage and the return of the dower to her husband. The district and appellate Zanzibar Kadhis and judges appear to regard *Khulu* as a judicial device that can be used to end a marriage when a woman is determined to be responsible for the marital discord, or when a husband does not desire a divorce and there are no grounds for judicial dissolution through *Fasakh*.

It is a misconception that Islam neglects the right of a wife by awarding the right of *Talaq* to the husband. In fact, Islam also gives the wife the right to claim the dissolution of her marriage if there is apprehension that she will disobey the limits of Allah. For example, in the case when she deeply hates her husband (take an example of the above case) and can no longer perform the marital duties prescribed by the divine laws, she can take steps to terminate the marriage. In such a case, she is permitted to compensate her husband out of her property in place of a form of dissolution of marriage. Although this right to terminate the contract of marriage requires the application to the Shariah court (Kamarudin, 1993).

According to Ibn Qudamma as cited by Anderson (1959) ^[5] *Khulu* is valid without any payment on the wife's part. Anderson claimed that *Khulu* is a dissolution of marriage granted by the husband in exchange for a payment by the wife-usually, but not necessarily, the return of her dower. Article 175 of the Egyptian Code, based upon the classical authorities also lays down that a *Khulu* can validly take place before or after consummation of the marriage, and without payment of compensation by the wife.

Dissolution of Marriage by *Faskh*

Faskh may be defined as the dissolution or rescission of a marriage contract by judicial decree. Under Islamic law wife may terminate her marriage by applying to the Sharia court to dissolve the marriage based on certain reasons which include desertion, impotence, imprisonment and cruelty on part of the husband. A woman married under Muslim law shall be entitled to obtain a decree for dissolution of her marriage on grounds of desertion for four years, failure or neglect of the husband to perform his marital obligations, if the husband is permanently suffering from leprosy or vulnerable disease for two years and if the husband imprisoned for the period of seven years.

Prominent Muslim scholars have different opinions regarding the power of the court to order the dissolution of marriage. According to Shafi School, *Fasakh* is allowed on the grounds of the husband's defect and becoming insolvent that could no longer give even the minimum maintenance prescribed, but there can be no dissolution of marriage where the husband has the means to procure property. The Hanafi scholars opine that the wife has no right to seek the annulment of marriage on the basis of the fact that her husband has oppressed her through beating and not being fair in treatment between her and her fellow wife/wives. However, she can complain to the judge, who on having convincing proof, can impeach the husband, give him advice, and command him to treat her fairly. On the side of the majority of Malik scholars are that if the husband mistreats his wife and hurts her tirelessly, she can complain to the judge. If she can prove her claim before the judge and seeks separation, the judge can order divorce. The opinion of Malik School has been incorporated into the law of many Muslim Countries like Egypt, Syria, Tunisia, Morocco, Iraq, Jordan, Algeria, Malaysia and Kuwait.

All the Sunni schools unanimously agree that every couple has the right to the option of rescinding the marriage contract if either party is found to be afflicted with elephantiasis, leprosy, insanity, or a defect of the procreative organs. This defect would cause not only a sense of physical repulsion in the other party leading to the defeat of the very object of marriage as a field for both mutual love and procreation but also to the possibility of transmitting such diseases and defects to the issue of the marriage (Muhammad, 1955).

In relation to that, any harm resulting from the failure of the spouses to live in good companionship with the other may render it to be sufficient reason for a judicial decree of divorce (Mulianah-Tengku, 2017). Consequently, discussion among the classical jurists on defects can be seen to revolve around the types of defects in general which make the dissolution of marriage permissible. Meanwhile, defects as discussed by contemporary scholars are arranged and divided into several categories namely physical defects, sexually related defects, and mental defects. There is consensus among the jurists that a wife is entitled to apply for dissolution of marriage in the case of impotency of the husband since it prevents the high intent of marriage which is enjoyment towards one another.

The prominent Muslim Jurists view that a marriage may be dissolved if the husband is suffering from a certain specified disease. Ibn Qayyim has also laid down a rule that if any defect in the husband or the wife which may result in happiness and affection in marriage is no anymore achieved, then it is a valid ground for dissolution of marriage. The jurists however differ on whether a wife has a right to dissolve a marriage through the court order in cases of defect of the husband. The Hanafis do not allow the wife the right to judicial divorce on the ground of defects of the husband. According to the Mālikis and the Shāfi, every defect in the genital parts of the husband allows the wife not only to have intercourse but also become the valid reason for the dissolution of marriage.

Grounds for the Faskh under the Kadhis Courts in Zanzibar

Islam provides ways on how the marriage may be terminated. One of them is where the wife applies to the

Court to annul the marriage based on certain reasons. In the case where harm to a Muslim woman has been established to the satisfaction of a Muslim judge, a Muslim woman can obtain a divorce in case of her husband's disappearance, non-maintenance, and failure of the husband to perform his marital obligations and any other ground which is recognized as valid for the dissolution of marriage under Muslim Law (Mehmood, 2016)^[11].

It has been a common practice amongst Zanzibar parents to arrange a marriage for their children whenever the opportunity arises, especially for a mature girl. There is no doubt that in doing so they sincerely wish to see that the marriage is successful, long-lasting and intended to be final. However, it is believed that incompatibility between the two spouses and their inability to adjust the conflict to each other's is one of the major reasons for divorce.

It is also important to note that apart from the above-mentioned reasons which can be taken as a general indication of grounds for divorce there are other factors that can easily cause a broken home. For example, if a husband is deeply attracted to another woman and does not want to have the additional responsibilities of a polygamous marriage, or if he is willing to do so, but the first wife refuses to share him with the second, he divorces her and embarks on a new marriage. On the other hand, if the wife is attracted to another man and wants a divorce, she creates serious difficulties which finally force her husband to release her. Such circumstances often occur when a woman is forced by her guardian for the benefit of the latter to marry a person against her wishes, for example when a young girl is given away in marriage to a wealthy old man (Abdullah, 2008)^[12].

Among married couples in Zanzibar, the actual divorce takes place by the actions of the parties and the question for the Kadhi is not whether they ought to be divorced but whether they have brought about a divorce. The Kadhi, therefore, is in substance a registering official with certain powers of investigation rather than a judge. He has only quasi-judicial powers (Stiles, 2005).

When husband and wife live together in their matrimonial home, the presumption is that each shall perform his legal responsibility as directed by the law if any part failed to act such duties or rights to another it will cause the marriage to break down.

Cruelty

In Islam, the husband has to treat his wife in a just and good manner, if a husband habitually treats his wife with cruelty either physically or mentally and makes her life miserable, the wife has the right to apply to the court for the marriage to be dissolved on the ground of *fasakh*. In Zanzibar, the practice is that the Kadhis' Court requests the wife to provide sufficient evidence to prove her claim, failure of which the application for *fasakh* will be set aside. In some cases, a Kadhis' Court demands a high standard of proof of the act of cruelty by the husband such as the requirement of two male witnesses, who have witnessed such an act. This has caused difficulty for the wife, as it is practically hard to fulfill this requirement.

To establish cruelty under the law, Hashim, Abas and Hak, (2010)^[1] noted that the petitioner had to show that the respondent's conduct was such as to cause a danger to the petitioner's life, limb, and health, bodily or mental state or to give rise to a reasonable apprehension of such danger.

The petitioner must at the first instance prove that the marriage has irretrievably broken down including unreasonable behavior of the other spouse that the petitioner cannot reasonably be expected to live with the respondent and the court upon hearing such petition shall, so far as it reasonably can, inquire into the facts alleged as leading to the breakdown of the marriage and if satisfied that the circumstances make it just and reasonable to do so, make a decree for its dissolution. However, in considering what is reasonable, the court will have regard to the history of the marriage and the individual spouses before it and from that point of view; it will have regard to what that particular petitioner, and what that particular respondent has in assessing what is unreasonable.

Evidence is important to prove the facts relevant to the subject matter of the dispute before the court. It is required of the claimant to prove beyond reasonable doubt for the court to give judgment against the accused or the defendant. The proof given must be clear and convincing and failure to support the proof will generally cause the claim to be rejected. Therefore, the burden of proof is on the claimant because normally claims what is contrary to the original presumption or apparent fact. The Prophet said:

"If the people would be given what they claim without evidence, some persons would claim other people's blood and properties, but it is obligatory on the claimant to produce evidence."

The requirements for discharging the evidence is contained in the Kadhis' Court Act. It is clear that the wife who applies for faskh must prove her allegation. Since the wife alleges the husband's cruelty, she needs to prove her case beyond a reasonable doubt. Therefore, the wife is required to bring two male witnesses to testify to the conduct of the husband or one male witness combined with two female witnesses (Al Quran, Al Baqra: 282).

If there is no witness, the issue will be proved through circumstantial evidence. On the side, the husband is required to live with his wife in good faith and with an acceptable lifestyle. He should be treating her justly and compassionately, he should also be kind to her parents and relatives. Allah (S.W) says in the Quran and leave with them honorably (Al Quran, Al Nisa: 19). It was reported that Hadrat Abubakar (Allah be pleased with him) is reported to have heard the holy Prophet Muhammad (P.b.u.h) as saying;

"One who treats badly those under their authority shall not enter the paradise."

In *Zakia Said Mdowe Vs Khalid Said Bakar*, in this case, it was reported that the complainant said that, her husband beat her vigorously, insults her by calling her a prostitute and that such problem started soon after her husband married the third wife, he disappeared for a full day and when she asked where he was he became very serious, beat her and provide abusive words, so the complainant asked the court to issue her divorce.

Similarly, in *Pili Vuai Juma v. Yahya Chum Juma*, in this case, the plaintiff claimed that the defendant beats her brutally almost every day and continue beating her until the wife goes back to her home. The wife stayed at her home for about Nine (9) months while his husband didn't ask her for anything or even provide maintenance. Therefore, the wife approached the court for a divorce. The Court collected the evidence ex – parte, where the defendant failed to appear before the court while he was summoned several times. The

divorce was granted on the ground of cruelty on part of the husband towards his wife.

In Zanzibar Kadhis' Courts, it is indisputable fact that to petition for divorce on the ground of cruelty to a Muslim woman, it is the responsibility of the petitioner to prove that she can reasonably be expected to carry on living with her husband unreasonable spouse's behavior. If the behavior is of extreme nature, it is easy to prove the unreasonableness of the act. However, if the behavior is trivial but has a significant negative impact on the petitioner, then the burden of proving the effects of the behavior lies on the petitioner. The task of proving this behavior is normally very difficult. Thus, it is the responsibility of a wise and learned judge to see that there is an irretrievable breakdown of the marriage. As for the dissolution of marriage for the Muslims, it is apparent that if the husband oppresses the wife, treats her badly and causes her life to be miserable, the wife can raise a complaint to the Kadhi seeking the dissolution of marriage.

Failure to Maintain the Wife

Under the Muslim Law on marriage, certain obligations are imposed on the parties and certain rights are vested in them. The rights and obligations arising out of marriage are reciprocal so that if either of the party fails to perform his/her duties, the spouse at fault shall no longer be entitled to the enjoyment of the rights vested in him/her. One of the rights of the wife is that she is entitled to maintain her husband and she is under obligation to look after the domestic comforts of the husband to make herself available to him. This obligation of the wife makes it necessary that she should live with the husband. Hence, if the husband fails to provide maintenance, she can lawfully refuse to live with him. Maintenance depends on the standard of society and aligns with the status of the spouse.

The connotation of failure to maintain the wife is the situation whereby the husband is unable to maintain his wife, with the meaning of providing her the essentials for life which include food, clothes and shelter; this is the most critical problem which in fact sometimes no forgiveness will be allowed in the marriage relationship. A wife is under the option to the desire to live with her husband regardless of missing her rights, but the Shariah gives her a strength way not to remain in such a hard situation by demanding a divorce. Husband is expected to spend according to his earnings as ordained in the Holy Quran;

"Let the rich man spend according to his means, and the man whose resources are restricted, let him spend according to what Allah has given him. Allah puts no burden on any person beyond what he has given him." (Al Quran, Surat At-Talaq: 7).

The Kadhis' Court Act provides that a woman married under the Muslim Law may file a civil case to seek divorce but the Act does not provide for the reasons which make the wife seek divorce. In *Mtumwa Masoud Kombo v. Mussa Suleiman Khamis*. The complainant demanded her divorce due to her husband's failure to provide her and her children with necessities and also she complained that her husband insulted her with abusive language and attempted to enter her against morality. She also claimed that she departed while she was pregnant and delivered a baby without seeing his husband. During the proceedings, the defendant was summoned but failed to appear before the court even unable to provide a written statement of defense. The Kadhis' court

on hearing the plaintiff and witnesses satisfied with the evidence produced and dissolved the marriage through Fasakh.

Similarly, in the case of *Faiza Ali Mzee v. Khamis Seif Khamis* the plaintiff aged 26 years celebrated her marriage with the defendant in the year 2012 and was blessed with two (2) children. The plaintiff claimed that her husband failed to maintain her and come home very late at night. This problem led her back to her home finding for food with her children. They tried to reconcile the matters with their parents but the parents failed to reach an agreement, the cause which accelerates her filing a case before Kadhis' court seeking a divorce. The Kadhis' court found that the parties could not live together as a husband and wife, because the husband failed to maintain her, therefore issued a decree of divorce.

The situation is quite different in other countries that practiced Islam like Malaysia and Indonesia whereby Muslim Personal Laws of the said countries have explicitly explained that the wife may file a case to seek a divorce before the Shariah Court if she has the reasons stipulated on such particular piece of the legislation. The best example is the Dissolution of the Muslim Marriages Act provides that women married under Muslim Law shall be entitled to obtain divorce provided the husband has neglected or failed to provide for her maintenance for two years. It is immaterial and no defense for the husband to justify for non-maintenance of her wife because the wife is rich, whereby the husband is bound to maintain the wife in all circumstances, even if she has her means.

Justice I. K. Kotwal has rightly pointed out while delivering the judgment in discussing the issue of maintaining the wife during the subsistence of the marriage.

"Any obligation on the part of the husband to maintain his wife necessarily postulates a corresponding right in the wife to claim it. It is more so because the relations between the spouses arising out of a Muslim Marriage are contractual in nature."

Desertion

This is another ground for demanding a divorce by the wife. It is practical now a day that some husbands go outside while leaving their matrimonial home for a long period without just cause by which they caused wives and children to suffer. Sometimes this problem happens when the husband decides to go abroad for hunting life but in some cases when they found that they have money enough to spend leave their matrimonial house and do luxurious life.

In *Riziki Hamad vs. Mkubwa Ali Khamis* case, the husband disappeared from his matrimonial home for seven (7) years, he lives in Bagamoyo in Dar es Salaam leaving her pregnant wife and children without any information and assistance. The complainant seeks her divorce before the court. The court issued a divorce after being satisfied with the fact elaborated by the side of the wife.

Similarly, in *Halima Ali Yahya v. Baraka Jumanne Juma* the husband has deserted his wife for more than one (1) year without any communication. The wife requested a divorce due to her husband's desertion. The court accepted this ground and divorced along with a certificate of divorce.

Types of Muslim Divorce Before Kadhi's Courts

The Muslim religion has given unilateral power on the side of the husband to pronounce divorce in the form of *Talaq*

and the room has been provided for the wives to seek a divorce before Kadhis' Court. It is quick and convenient for the wives to request a divorce from Kadhis' Court if the marriage life goes miserable or experience domestic quarrels with their husbands and if they wish to release themselves from a bad marriage. As far as this study is concerned, *faskh* and *Khulu* were discussed as the types of divorces executed before Kadhis' Courts as an exclusive right by women who used to dissolve Muslim marriages.

Faskh divorces were on the grounds of intolerable behaviors based on adultery, desertion, cruelty, lack of maintenance and sometimes polygamy asserted and must be proved by the wives while *Khulu* divorces were the ending of marriage at the instance of the wife for a justified cause upon payment of certain settlement money to be paid by either a wife or anyone else with the consent of the wife. Section 5 (2) of the Kadhi's Court Act No. 9 of 2017 required the parties to make a claim for divorce and to be submitted before Kadhi's Court which the jurisdiction is permitted which will then inquire about the fact. The party will be subjected to a mediation process and if only failed the divorce will be issued. The Kadhis' Court interfered with the claims petitioned and if satisfied with the evidence provided determine the case whether to conclude with the agreement between the spouses or end the marriage. Based on the opinion of respondents, the current study found that *Fasakh* and *Khulu* were the most common divorce executed in the Kadhis' Court. The majority of respondents (87.5%) confirmed that *Faskh* is commonly used by a good number of people, while (12.5 %) mentioned *Khulu*.

Besides the opinions made by Respondents on the percentage of *Fasakh* and *Khulu* divorces, the fact is that Kadhis' Courts entertain more *Fasakh* cases initiated by the wives. For example, in the year 2020, a total number of 715 cases have been filed out of those cases only 23 are *Khulu* cases. Again, taking into consideration six months starting from January – June 2021 the total number of cases filed in such period was 366 but only 2 cases of *Khulu* were filed.

Nature of Divorce Petition

The application of divorce petition before Kadhis' Court is a unilateral petition that is the petition brought by almost Female sides seeking the decision of the Kadhi granting her divorce, though the male may file cases if he wants to secure his marriage from breaking down and the wife is at fault. It is very rare to find out a joint petition between male and female seeking divorce and we can say that there are rare divorce cases of such nature. On such application, females were required to demonstrate that marriage has broken down which is supported by the ground in their petition such as adultery, cruelty, lack of maintenance and desertion upon which proof must be obtained to convince Kadhi in making a proper decision. Similarly, the court shall be required to serve the application for divorce to the husband and fix a date to consider the petition and give the proper direction on adjudicating the matter.

A divorce proceeding in the Kadhi's Court shows that securing a divorce is a matter of proofing and going to Court is regarded as something embarrassing for the women in Zanzibar. It is often avoided unless necessary. Due to financial hardship, most of the respondents complained that they cannot afford to hire Vakils or legal representatives to plead their cases.

Grounds for Divorce

Grounds for divorce mean the divorce complaints as they appear in the divorce petition. Almost every divorce petition filed before Mwanakwerekwe Kadhi's Court is accompanied by the ground as far as the conflict between the husband and wife is concerned or the wishes of the applicants. The major categories of grounds petitioned are cruelty, desertion on part of the husband, adultery and the husband's failure to maintain her wife for many reasons including too much drinking of alcohol. It was observed that in the plaint and the proceeding intolerable behavior on the part of the husband toward his wife was a mixed ground in almost every case filed. In their accounts of the events surrounding the grounds for divorce, the common views amongst the discussion participants and secondary data found from revealed that; cruelty is the main ground for divorce filed by women before Mwanakwerekwe Kadhi's Court in Zanzibar cited by 38.1%, this was followed by the husband's failure to maintain his wife 22.2%, while desertion on part of the husband (15.8%). Furthermore, Adultery (14.5%), husband's failure to perform conjugal rights (6.3%) and polygamy (3.1%).

The majority of female participants agreed to divorce and the minority would choose to reconcile their differences with their husbands and decided to return home to share matrimonial life if the husband assured her a cheaper, efficient and happy life and set aside marital trouble. Examining this trend of reconciliation, it is revealed that the husband must be taking care of his wife by providing the necessity according to his means and avoiding any kind of maltreatment toward her to make his marriage sustainable to avoid divorce.

The unemployed wives who were housewives stay at 69.2% as the highest to file more cases using both cruelty and lack of maintenance on the side of their husbands as compared with the number of wives who are in service (30.8%) who are educated enough with the level of bachelor and master level who are using various grounds for divorce including *Khulu* and desertion on part of their husbands, but a small number of wives claimed on the ground of impotence on side of their husband and some of them failed to prove before the Kadhis' Court and their claims become useless.

The result of the study indicates that 72% of unemployed wives used adultery as their ground for divorce followed by 28 percent of wives who are in service. As for the ground of cruelty in the divorce petition, unemployed wives reached 81.1% compared to employed wives who possess only 18.9%. The unemployed wives who are using the ground that their husband failed to maintain properly account for 63% compared to 37% of employed wives who used the same ground during the petition for their divorce, this happened since most women in Zanzibar are economically poor and depend on their husbands. On the side of desertion on the part of the husband as the ground for divorce for unemployed wives the rate was dropped to 34% compared to employed wives who counted 64 percent; in this ground for divorce employed wives take the pick in comparison to unemployed wives. Regarding the performance of conjugal rights on part of the husband as the ground for petition of divorce for the unemployed wives, the percentage reached 88 and seems to be higher as compared to 22% of the employed wives claiming divorce. The rate of those unemployed wives who claimed polygamy in their petition for divorce is higher with 83.6% compared to 16.4% of

employed wives who claimed polygamy as the ground for divorce. The study shows that the wives of working status are more willing to petition for divorce due to their financial position and literacy on marital rights and obligations, though the number of unemployed wives petitioned for divorce is higher compared to employed wives.

Conclusion

Divorce has always been permitted in the Shariah law as a last resort after all avenues of reconciliation between the parties has been failed. Before the dissolution of marriage take place the couples are advised to amicable negotiate in a manner guided by the Quranic principles and traditions of the Prophet (peace be on him) as opposed to litigation in the Shariah court.

Under Islamic law, divorce is not an entire act of the husband pronouncing Talaq but also may be initiated by the wife on application to the Kadhis' court. The existence of this legal framework for the dissolution of marriage has many legal and social impacts on the spouses as well as the children. The Muslims are advised to end up their marriage when the hardship of an intolerable life approaches them on possible grounds including failure of the husband to maintain his wife, imprisonment and sexual defects on both parties.

When the wife applied before Kadhis' court for the annulment of her marriage, the Kadhi will have the duty to reconcile the marriage of both husband and wife to overcome the marital conflict and reach some form of compromise to live together before experiencing divorce. Divorce which is granted by the Kadhis' court is irrevocable where a husband cannot re-enter the marriage contract with his divorced wife unless she, after having married and establishing conjugal relations with her new husband, is divorced for some reason and is willing to re-enter into a marriage contract with her former husband.

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