

# M—the Muslim

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www.supkem.org  
Shawwal - 1447 A.H  
No. 010 April 15-30, 2026

CORRIDORS OF JUSTICE

## Kenyan courts now embrace Islamic doctrine on divorce

In dissolving a 21-year marriage between SKK and EWK, the court said that the law does not require spouses to endure emotional, psychological or social imprisonment under the guise of marriage. Under Sec. 71 of the Marriage Act; it's recognized that divorce under Islamic law seeks to protect people's reputations, hence parties are insulated against messy divorce...

STORY ON P2



Sheikh Yusuf Abouhamza, the national coordinator of Muslim Marriage Officers and the Deputy Director of Religious Affairs at SUPKEM.

A photograph of the Supreme Court of Kenya building, a grand structure with classical architecture featuring large columns and arches. The words "SUPREME COURT OF KENYA" are visible on the facade.

SUPREME COURT OF KENYA

# Courts finally embrace Islamic doctrine to avoid messy divorce

In the first week of April 2026, the High Court of Kenya, sitting as a court of first appeal, rendered a very significant judgement in a divorce case.

In the case of *SKK vs. EWK*, it was declared that courts should not compel couples to remain in irretrievably broken down marriages, noting that such marriages amount to emotional or social imprisonment.

In dissolving the 21-year marriage between *SKK* and *EWK*, the court said that the law does not require spouses to endure emotional, psychological or social imprisonment under the guise of marriage.

Justifying its position, the court stated that where love and companionship have ceased to exist in a marriage, divorce should be granted instead of forcing couples into judicial separation with no realistic hope of reconciliation.

The case in question stemmed from a divorce petition filed by the husband who accused his wife of cruelty, desertion and adultery—which had rendered their marriage unbearable thus forcing him to leave the matrimonial home in order to protect their children from transferred emotional stress.

The wife, however, opposed the divorce on religious grounds, pointing out that as a Catholic, her faith does not recognize divorce.

The wife further made a counter-claim against the husband accusing him of cruelty, saying that he withdrew conjugal rights, physically abused her in front of the children and consequently deserted the matrimonial home.

She said that the husband did not approach anyone to reconcile them and that her family members were not even aware of the divorce case.

Before approaching the High Court on appeal, the case had started in the Magistrate's court which dismissed the husband's petition and, instead, granted judicial separation in the hope that the marriage could be salvaged.

But upon review on appeal, the High Court that the couple had lived apart since July 2020 and had not had any marital intimacy, a situation which gave a clear



indication of irreparable breakdown of the marriage.

The court ruled that judicial separation is only appropriate where reconciliation is feasible, and not where one party is very clear in the resolve that they don't want an end to the marriage.

In making its final decision to grant the divorce, the High Court pointed out as follows; "Judicial separation is a provisional remedy aimed at giving parties space to reconcile. It cannot be imposed where reconciliation is not feasible."

Hence, the court emphasized that the fundamental elements of marriage are companionship, intimacy and shared life. "So, where companionship, intimacy and shared life are extinct in a marriage, "there is no legitimate purpose served by retaining the marital covenant, which is better dissolved in order to set each spouse free."

This case sets new jurisprudence in divorce matters in Kenya because it takes into consideration the new provisions of the Marriage Act 2013 which, unlike before, allows dissolution of a marriage on grounds of irreconcilable differences that render the marriage irretrievably broken down.

Previously, divorce in Kenya was strictly fault-based in the sense that a petitioner seeking dissolution needed to go through the laborious requirements under the Matrimonial Causes Act to prove that the other party was at fault.

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For example, in case adultery was invoked as ground for divorce, the party invoking it was required to prove to the satisfaction of the court how and when the adultery took place and with whom!—that indeed made divorce a messy affair because it required parties to wash their dirty linen in public, and even drag-in third parties.

But while the Matrimonial Causes Act made divorce a messy enterprise, the Islamic law on divorce already had foresight and made things easy and tidy in order to save couples from the shame of a messy divorce.

Under Section 71 of the Marriage Act, the law provides that dissolution of marriage celebrated under Islamic law should follow the Islamic law on dissolution of marriage.

This provision recognizes that divorce under Islamic law seeks to protect people's reputations, hence divorce need not to be messy so as to drag reputations through the mud. For this reason, Islamic law allows dissolution of marriage if the parties encounter irreconcilable differences that render their union irretrievably broken down.

In essence, the High Court in the of case *SKK vs. EWK* adopted an approach to divorce that Islam had already recommended 1400 years ago!

According to Sheikh Yusuf Abouhamza, the national coordinator of Muslim Marriage Officers and the Deputy Director of Religious Affairs at the Supreme Council of Kenya Muslims, there are two main approaches to

divorce under Islamic law, namely '*Talaq*' and '*Khula*'.

Under '*Talaq*', the husband is the one who seeks the declaration to end the marriage and under '*Khula*' it is the wife who seeks the declaration to end the marriage.

"Many non-Muslims have the wrong idea about *Talaq*—many think that *Talaq* is something that can just be thrown around at the whims of the husband. But Islamic law requires that before *Talaq* is declared, efforts at reconciliation must have been attempted to no avail. So, by the time *Talaq* is declared, people should know that the said marriage is irretrievably broken down and reconciliation is not feasible. The same applies to *Khula* which allows women in a marriage to seek divorce," said Sheikh Abouhamza.

In this regard, it is important to point out that as much as Islamic Law has made divorce tidy as now acknowledged by the Marriage Act 2013 and as stamped by the case of *SKK vs. EWK*, marriage is a sacred contract (*Nikah*).

But as much as it is a sacred contract, marriage can be dissolved under very specific circumstances—the circumstances for dissolution include; *Faskh* (judicial annulment due to harm or defects at the threshold of the marriage; *Talaq* (dissolution initiated by the husband); and *Khula* (dissolution initiated by the wife).

And contrary to the misconception by many non-Muslims and even some Muslims that women in Islam cannot seek divorce, the Holy Qur'an provides as follows;

"If a woman fears ill-treatment or desertion from her husband, there is no blame on them if they seek terms of settlement, for peace is best." (Qur'an 4:128).

One of the primary reasons for divorce in Islam is irreconcilable differences that render the marriage irretrievably broken down, and it is clear from the case of *SKK vs. EWK* that Kenyan courts now agree with the Islamic law that irreconcilable differences is a valid ground for divorce.

According to Islamic law, when a couple finds

# SUPKEM and Turkish delegation in high-level consultative meeting



Part of The Turkish delegation was led by his Excellency Subutay Yuksei (seated in middle) during the high-level meeting.

The Supreme Council of Kenya Muslims (SUPKEM) has held a high-level consultative meeting with representatives of Turkiye led by its ambassador.

The National Chairman, Al Hajj Hassan Ole Naado led the SUPKEM delegation along side other officials as the Turkish delegation was led by his Excellency Subutay Yuksei.

The engagement reaffirmed the strong and long standing relations between Kenya and the Republic of Turkiye, with deliberations centering on enhancing cooperation in key areas of

mutual interest including socio-economic development, humanitarian assistance and cultural exchange.

SUPKEM reiterated its steadfast commitment to fostering strategic partnerships aimed at advancing the welfare and prosperity of the Muslim community while contributing to the broader development of the Kenyan society.

The Turkish delegation also included among others Hon. Prof. Abdurrahim Dusak, MD, Member of Parliament for Sanliurfa (AK Parti), Head of the Turkish delegation to

the Parliamentary Union of OIC Member States (PUIC) and Member of the National Defense Committee.

The meeting concluded with a mutual commitment to strengthen bilateral relations and pursue practical avenues for continued cooperation between SUPKEM and Turkish stakeholders.

In the SUPKEM delegation was also the National Treasurer-Al Hajj Omar Khamis, North Eastern Regional Coordinator-Dr. Adan Yunis and Central Kenya Regional Coordinator-Sheikh Mohamed Omar Maluki.

# Religious leaders call for calm after killing of taxi driver in Garissa

Religious leaders in Garissa County led by the Supreme Council of Kenya Muslims (SUPKEM) Garissa County Chairman Sheikh Hassan Abdi (pictured below) have called for calm and restraint following the alleged killing of a taxi driver by a police officer.

While addressing Garissa residents, the leaders cautioned against turning the incident into a tribal or religious issue, emphasizing that the actions of an individual should not be generalized.

The religious leaders also condemned the incident while at the same time demanded swift justice.

"We also prevail upon the youth to refrain from demonstrations that may lead to violence and destruction of property."

Garissa County Commissioner Mohamed Mwabudzo assured residents

that investigations were on going and at an advanced stage noting the suspect will be brought to book.

Meanwhile, The Independent Policing Oversight Authority (IPOA) has launched investigations into the incident involving police officers.

In a statement issued by IPOA Vice Chairperson Ann Mwangi the agency insisted it remains committed to conducting independent and impartial investigations into the matter.

IPOA said its investigators have already attended the post-mortem, recorded witness statements, obtained police documents, secured exhibits, and documented both the scene and the vehicles involved.

The Authority appealed for calm, stating that this is crucial for the smooth progress of ongoing investigations into the incident.



Picture: Courtesy

# SUPKEM sets the record straight over its land in Huruma, Nairobi

**Individuals with sinister motives have been issuing false and misleading information to the Muslim community and the general public about the said property...**

SUPKEM has taken note of misleading videos circulating online allegedly purporting to show demonstrations in Huruma/Kiamaiko area of Nairobi and accordingly issued a statement on regard to the same.

In a communique issued by SUPKEM, these actions are driven by individuals with vested interests whom should not mislead the Muslim community. "We thus urge elders and the youth to seek verified information and uphold unity as ethic divisions has no place according to Islamic teachings," the statement read.

In light of the above SUPKEM, wishes to clarify that the land and mosque in question are legally registered properties of the council and are subject to an active matter before the High Court of Kenya, with existing court orders in force.

The land in question houses Huruma Jamia Mosque and the Kenya Muslim Academy located along the Outer-Ring Road in Huruma/Kiamaiko area of Nairobi.

Key Court Orders include:  
A temporary injunction restraining any unauthorized

entry, occupation, construction, or interference with regard to property (L.R 209/10509 / L.R 41868)

The property largely remains under the exclusive use for educational purposes

(Kenya Muslim Academy)

Law enforcement has been directed to ensure compliance and prevent breaches of peace.

SUPKEM therefore remains steadfast in protecting its

waqf assets and will proceed with lawful development noting that demonstrations or misinformation will not override due legal process. Our offices remain open to all seeking clarity and truth.



## Religious leaders call for calm after killing of taxi driver

A PUBLICATION OF THE SUPREME COUNCIL OF KENYA MUSLIMS (SUPKEM)

# M—the Muslim



## Waqf selection panel visits SUPKEM

A delegation from the Waqf Commission selection panel has paid a courtesy call on SUPKEM.

Led by the Chair of the Panel-Mohamed Alawi together with his Vice-Chair-Sister Sumayya Hassan and Shiekh Hassan Alamin, the panel was established under the Waqf Commission Act to recruit members of the Waqf Commission.

The Waqf Commission Act provides for the making and administration of all *awaqf* in Kenya. It also provides for the validity of a *waqf* as follows;

(1) A *waqf* shall be valid where—

- (a) it is made in accordance with Islamic law;
- (b) the *waqif* has attained eighteen years;
- (c) the *waqif* is of sound mind; and
- (d) it is made for religious purposes for the poor and vulnerable within the Muslim community.

(2) A *waqf* shall not be invalid merely because the benefit of the *waqf* that shall be reserved for the poor or any other purpose shall not take effect until after the extinction of the family of the *waqif*.

The Act further provides for the establishment of the Waqf

### ABOUT THE WAQF COMMISSION

Established under the Waqf Commission Act Chapter 109, Laws of Kenya

Plays a critical role in the oversight and management of Muslim properties (Waqf) which are essential for supporting various charitable initiatives. These projects are dedicated to religious, educational, and social purposes as envisioned by their donors

Commission and its responsibilities.

As such, the Waqf Commission plays a critical role in the oversight and management of Muslim properties (Waqf) which are essential for supporting various charitable initiatives. These projects are dedicated to religious, educational, and social purposes as envisioned by their donors.

Through its efforts, the commissioners not only promote sustainable development of *waqf* assets but also enhance the social-economic welfare of the Muslim Ummah. Through funding mosques and madrasahs, the Waqf Commission has significantly contributed to the overall betterment of the community.

In the discussions with the selection panel delegation, the SUPKEM leadership reaffirmed its commitment to support the work of the panel, emphasizing the need for collaboration to ensure the success of the Commission.

"At SUPKEM we recognize that by working together, we can better meet the expectations of the Muslim Community and preserve the legacy of *Waqf* for future generations," said Supkem national chairman Hassan Ole Naado.

## Courts now embrace Islamic doctrine on divorce

### Cont'd From P2

themselves in constant conflict with no resolution in sight, and after exhausting all avenues for reconciliation, including seeking help from marital coaches and family mediation, divorce is a justified option.

But this should not be misjudged to mean that Islam does not place a high premium on marriage—indeed, Islam promotes harmony and peace within

the household, and "Sakina" is the word used to describe peace and harmony in marriage.

"Sakina" in Arabic signifies 'tranquility' 'peace' or 'calm.' Hence, when a marriage becomes a source of continuous strife, it lacks "sakina" and may be better for the parties to part ways.

There are various types of "irreconcilable differences" which include different life goals where spouses realize that their long-term goals and aspirations are no

longer aligned, personality clashes where persistent personality conflicts lead to endless disputes, and cultural and familial pressures where differences in cultural backgrounds and familial expectations create an unbridgeable gap.

In this regard, Islamic law acknowledges that some marriages become irretrievably broken down due to irreconcilable differences. And when a marriage reaches a point where it cannot be repaired, as the case of SKK

vs. EWK has demonstrated, Islamic law permits divorce as a mercy to both parties.

This principle acknowledges the reality that some marriages, despite best efforts, cannot be saved and that remaining in such a union may cause more harm than good, and this explains why the High Court in SKK vs. EWK pointed affirmed as follows,

"the fundamental elements of marriage are companionship, intimacy and shared life. So, where

companionship, intimacy and shared life are extinct in a marriage, there is no legitimate purpose served by retaining the marital covenant, which is better dissolved in order to set each spouse free."

Under Islamic law, signs of irretrievable breakdown include endless disputes with no resolution in sight; complete emotional disconnection between spouses and failure of all attempts at mediation and counseling.