120315 - If the husband says “I divorced my wife” but he is lying or does not intend divorce

the question

If a husband announces his divorce of his wife among his family and relatives by saying’ I have divorced her’, with the intention of divorce based on the fact that he goes to the judge to divorce her, but the divorce is not completed because the two sides cannot agree with regard to the custody of the children, what is the Islamic ruling on a husband who announces his divorce among the people by saying I have divorced her and that's that?.

Detailed answer

Praise be to Allah.

If the husband says of his wife: ‘I have divorced her’, then divorce takes place, whether he intended divorce or not, and whether he was telling the truth or lying, because this phrase is clear and divorce takes place thereby even if he did not intend it.

Ibn Qudaamah (may Allaah have mercy on him) said in al-Mughni (7/306): If it is said to him, Do you have a wife? and he says no, intending thereby to lie, then he does not have to divorce his wife. But if he says, ‘I have divorced her’, intending thereby to lie, then the divorce is binding. Rather [the first scenario] is not binding if he intended to lie, because he is saying ‘I do not have a wife’ which is a metaphor that cannot refer to divorce at all. And if he is telling lies with no intention of divorce, then it does not count as such.

But if he said, ‘I have divorced her’, intending to lie, then she is divorced, because the word divorce (talaaq) is clear and divorce takes place thereby even if it was not intended. End quote.

The divorce that takes place in this case is a revocable divorce; a husband may take his wife back during the ‘iddah if it is the first or second divorce.

And Allaah knows best.