

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BUSIA

DIVORCE CAUSE NO. 1 OF 2014

NBM.....PETITIONER

VERSUS

PBS.....RESPONDENT

JUDGMENT

1. The petitioner and the respondent in this matrimonial cause married under the Luhya customary law. The petitioner pleaded that they married in the year 2009 but in her testimony put the date of their marriage as late 2010. The respondent however said that the marriage commenced in the year 2012 January. This date is not material to the divorce.
2. The two also do not agree as to when they terminated their relationship. The petitioner contended that it was on 27th September 2013 while the respondent said it was on 7th May 2013.
3. The two however agree that for any intent and purpose, their marriage is dead. Each is accusing the other for the collapse of their relationship.
4. It is therefore abundantly clear that the marriage between the petitioner and the respondent has irretrievably broken down.
5. The issue of maintenance was brought up very poorly. The petitioner prayed for an order of a monthly maintenance of Kshs50, 000/=. This was even after she admitted that she was earning more than the respondent. If she testified that her basic salary was Kshs.41, 000/= whereas the respondent was several job groups below her, how then did she expect him to raise Kshs50, 000/= per month? Maintenance of a child is not meant to punish the other co-parent nor is it expected to be a source of enrichment. I would borrow from the words of Okwengu J.A in the case of **MEK vs. GLM [2018] eKLR**. Although in this case the issue was spousal maintenance, the spirit still applies in maintenance of a child of a marriage. At paragraph 30 she stated:

It would be wrong to allow the respondent to treat the divorce as a windfall to improve his standard of living by extracting maintenance from the appellant.

6. The other crucial factor that was perfunctorily addressed was the issue of paternity. The respondent contended that the child in issue was born more than nine months of their parting. It was admitted that he has never set his eyes on the child. The court can only issue orders of the maintenance for the child after the parties have exhaustively addressed the paternity dispute given the circumstances of this case.
7. From the foregoing analysis of the evidence I find that the marriage between the two has irreparably broken down.
8. I accordingly allow the divorce. Decree nisi to issue. Each party to shoulder own costs. Right of appeal within 30 days.

DELIVERED and SIGNED at BUSIA this 3rd day of December, 2019

KIARIE WAWERU KIARIE

JUDGE