



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF NAIROBI**  
**JUDICIAL SEPARATION CAUSE NO. 268 OF 2013**  
**IN THE MATTER OF THE MARRIAGE ACT (CAP 150)**  
**AND**  
**IN THE MATTER OF THE MATRIMONIAL CAUSES ACT (CAP 152)**  
**AND**  
**IN THE MATTER OF THE CHILDRENS ACT CAP 141**  
**B W.....PETITIONER**  
**VERUS**  
**A A.....RESPONDENT**

**RULING**

The application before this Court is brought under section 82(1), (2), 83,88 of the Children Act 2001, section 30 of the Matrimonial Causes Act. The applicant seeks the following orders;

1. That legal custody of the child, M M, born out of the marriage between the Petitioner and the Respondent be granted to the natural mother B W, the Petitioner, pending the hearing and determination of this application and the petition for Judicial separation.
2. The costs of this application be provided for.

The application is supported by the following grounds

1. The petitioner is the mother of the child.
2. The child is of tender years and it is in the best interest and welfare of the child that the mother be granted custody;
3. The respondent has refused, failed and or neglected to maintain the child.
4. The Respondent had threatened to take the child to another country away from the petitioner.

The application is supported by the affidavit of B W the applicant . She deposes as follows that; that the Respondent and her contracted and celebrated a civil marriage on the 22<sup>nd</sup> day of December 2012. They

obtained a marriage certificate dated 9<sup>th</sup> January 2013 attesting to formalization of their union. That after solemnization of their marriage the Respondent and herself relocated to Spain temporarily and later to Netherlands where they cohabited as husband and wife. That out of their union and during the duration of the cohabitation, their child, M M A W, was born on the 13<sup>th</sup> day of May 2013. That during the subsistence of the marriage, the Respondent subjected her to extreme cruelty, he accused her falsely of suffering from bi polar disorder, over powered her numerously and administered drugs against her will, which drugs, he claimed were for treating people with bi polar disorder. That the acts of cruelty extended to the Respondent spreading false rumors to her friends and family that she is mentally unwell. That on or about the 19<sup>th</sup> October day 2013, the Respondent attempted to grab the child from her arms which resulted to a physical struggle as she was nursing the child to sleep. He insisted on taking the child to his relatives in Germany however she told the Respondent that he could not take the child across the borders to his relatives as the child was still of tender age and advised him to invite his relatives to visit the child in their home in Netherlands. He in turn turned violent and threatened to take the child to Spain where she would never see the child again. That as a result of the said acts of cruelty she was forced to seek alternative accommodation away from the matrimonial home as the atmosphere at home was acrimonious and unsuitable for bringing up a child. That she has had actual custody of the child, now 6 months old, and she has been solely caring and bringing up the child, accommodating him and catering to his every need at his residence in Nairobi. That the Respondent has shown no interest in maintaining and/or providing for the child. That she has single handedly provided for the child and the Respondent has shown no desire to help in catering for the needs of the child. That being the natural mother of the child and having actual custody, and given that the Respondent has shown no concern or inclination to look after him, it is in the best interests of the child that legal custody be granted to her.

There is affidavit of one C W dated the 11<sup>th</sup> of March 2012; an advocate of the High Court filed explaining how they served the Respondent. The Respondent though served did not attend the hearing of this application, the application was challenged.

I have considered what is deposed by the applicant. Under section 82 (3) (a) of the Children Act Chapter 141 the court may make an order vesting custody of a child to a parent. Section 83 gives the principles to be applied when determining whether the custody order should be made in favor of the applicant, one of them being the best interest of the child. The applicant deposes that since she moved out of their matrimonial home she has had the actual custody of the child who was born on the 13<sup>th</sup> May 2013 , that she has been caring for the said child alone and that the Respondent has not shown any interest in maintain or providing for the child. From what is deposed which has not been challenged, I find that the legal custody of the child M M born of the marriage between the applicant and the Respondent be granted to the Petitioner B W who is the natural mother pending the hearing and determination of the petition for Judicial separation. Costs shall be in the cause.

Orders accordingly.

Dated signed and delivered this 3<sup>rd</sup> Day of November 2014.

**R.E. OUGO**

**JUDGE**

In the presence of:

.....For the Applicant/Petitioner

.....Respondent

.....Court Clerk