



**MGD v ADA (Divorce Cause E007 of 2025) [2025] KEKC 22 (KLR) (20 June 2025) (Judgment)**

Neutral citation: [2025] KEKC 22 (KLR)

**REPUBLIC OF KENYA  
IN THE KADHIS COURT AT ISIOLO  
DIVORCE CAUSE E007 OF 2025  
DA IBRAHIM, SRM  
JUNE 20, 2025**

**BETWEEN**

**MGD ..... PETITIONER**

**AND**

**ADA ..... RESPONDENT**

**JUDGMENT**

1. This judgment concerns a matrimonial dispute between MGD (the Petitioner) and ADA (the Respondent) in Divorce Cause No. KCDC/E007/2025 at the Kadhis’ Court in Garbatulla. The Petitioner and Respondent were married in 2004 under Islamic law (Nikah) and are blessed with seven children from the marriage. The Petitioner filed this case seeking dissolution of the marriage and related reliefs, citing cruelty, neglect, and a pronouncement of divorce (ṭalāq) by the Respondent. The Respondent opposes the petition, alleging family interference and expressing a desire to continue the marriage. Having heard the parties and their witnesses, and upon considering the evidence and applicable law, this Court now delivers its judgment in accordance with Islamic law, *the Constitution* and laws of Kenya, and the welfare of the children.
2. It is not in dispute that the parties were married in 2004 in an Islamic ceremony. They cohabited as husband and wife for about 21 years and have seven children together. Both parties are Muslim and thus fall under the jurisdiction of this Kadhis’ Court for matters of marriage and divorce. The marriage was polygamous since the Respondent took a second wife around 2016. The Petitioner states that marital problems arose and intensified over the years, including incidents of domestic violence, insults, and lack of maintenance. Tensions were exacerbated by the Respondent’s remarriage, after which the Petitioner says he stopped providing her personal upkeep entirely.
3. Multiple attempts at reconciliation were made through family and clan elders in accordance with Islamic tradition. The Petitioner’s father and community elders intervened on several occasions to mediate disputes. The elders often found the Respondent at fault and even imposed community resolutions – for example, at one point elders ruled that the Respondent should compensate the



Petitioner's family with a cow and seek the father-in-law's forgiveness. The Respondent, however, failed to comply with these resolutions. On a later incident in October 2024, the conflict escalated: the Respondent admits that during a quarrel he pronounced two ṭalāq divorces and handed the Petitioner a written divorce letter, albeit "in a moment of anger". Following this, the Petitioner left the matrimonial home and took refuge at her father's house. The elders' committee advised the Respondent to either allow the Petitioner to return peacefully or for him to relocate to his other household temporarily for the children's sake. He refused to vacate the matrimonial home unless compelled by a court order. Efforts at reconciling the parties failed, and the Petitioner remained separated at her parents' home for the last eight months. Ultimately, this suit was filed, marking the culmination of longstanding marital discord.

3. The Petitioner, MGD, claims that the Respondent has subjected her to years of marital cruelty and neglect. In her testimony, she recounted several instances of physical and emotional abuse. She stated that the Respondent has beaten her on numerous occasions – including a humiliating incident where he assaulted her in public during Ramadan – and frequently insulted her, even using vulgar language about her and her family. She described the Respondent as having effectively abandoned her: after he married a second wife about nine years ago, he ceased providing her personal maintenance or support, contrary to his duty to treat co-wives justly. Matters came to a head in October 2024 when, during a domestic quarrel, the Respondent chased her out of the house and pronounced a formal ṭalāq. The Petitioner testified that the Respondent uttered two divorces and physically handed her a written divorce letter in the presence of witnesses. Since that pronouncement, the Respondent has provided her no financial assistance at all, and he prevented their children (who stayed with him initially) from visiting her, even threatening to punish them if they attempted contact.
4. The Petitioner's account is supported by witness testimony. Elder Abdi Abkula (Bagajo), who participated in the community mediation, confirmed that the Respondent was found at fault in past incidents and was directed to provide compensation (such as a cow) which he never paid. Elder Abdi further testified that during the October 2024 dispute, the elders found the Respondent had indeed written a divorce letter. The elders advised that since this talaq was issued in anger, the Respondent should participate in reconciliation efforts before it could take effect. The Respondent, however, refused to follow through with reconciliation meetings arranged with a local Sheikh, resulting in the Petitioner staying at her father's home for months. Another elder, RAB (a relative of the Respondent), corroborated that in a prior dispute in 2020 the Respondent was penalized for disrespect to the Petitioner's father (he paid Kshs. 5,000 as a gesture). RAB also recounted that on 24th October 2024, elders visited the couple's home and advised the Respondent to leave the house temporarily to defuse tensions, but he flatly declined and instead insisted the Petitioner should leave. RAB confirmed the Respondent had authored a divorce letter and that community leaders, including himself, tried to get the Respondent to reconcile, but he failed to cooperate.
5. The Petitioner's father, GD, also gave sworn testimony. He described a long history of disrespect by the Respondent, including the Respondent insulting him and refusing to greet him or involve him in normal family matters. The father testified that he repeatedly took his daughter back to her matrimonial home after quarrels, prioritizing the preservation of the family. He even involved respected elders (the late Giresa Kitana and others) and at one stage referred the matter to the police, leading to the Respondent's brief arrest. Community elders intervened and withdrew the police complaint on the condition that the Respondent pay a cow in atonement; the Respondent agreed publicly but then privately declared he would not honor that agreement. The father's testimony underscored that every reconciliation effort had ultimately failed due to the Respondent's recalcitrance. He expressed readiness to have the dispute resolved finally according to Islamic law.



6. In her pleadings, the Petitioner prays for the following reliefs:
- (1) a declaration that the marriage is dissolved and confirmation of the ṭalāq pronounced by the Respondent via the written divorce letter;
  - (2) sole custody of the seven children of the marriage, with reasonable visitation rights to the Respondent; and
  - (3) an order for the Respondent to pay child maintenance of Ksh. 15,000 per month for the children’s upkeep, as well as to cover all their educational and medical expenses. The Petitioner emphasizes that continuing the marriage is untenable (“beyond repair”) given the protracted abuse and that it is in the children’s best interests that they reside with her in a stable, violence-free environment.
7. The Respondent, ADA, does not deny that serious conflicts have occurred, but he attributes the marital breakdown primarily to interference by the Petitioner’s family. In his sworn statement, the Respondent asserted that he married the Petitioner in good faith and provided for his family to the best of his ability. He claims that whenever the couple had disagreements, the Petitioner’s relatives would intrude, insult him, and even threaten to beat him or remove him from his own house. According to the Respondent, this constant external interference undermined the marriage and caused him great frustration. He testified that for the last five years many of the Petitioner’s family members stopped speaking to him, creating an environment of sustained tension.
8. Regarding the incident of October 2024, the Respondent gave his version of events: he came home from tending livestock and asked for tea; the Petitioner allegedly insulted him and poured cold tea on him, provoking a quarrel. The Petitioner’s relatives then arrived and, rather than calming the situation, “aggravated it further,” according to the Respondent. In the heat of that altercation, the Respondent admits that he pronounced two ṭalāq in anger and handed the Petitioner a written divorce letter. However, he contends that this was not a deliberate, considered divorce but an impulsive act of rage. He stated that “it was done in a moment of anger and not with calm or deliberate intention”. After this incident, the Petitioner left with her family. The Respondent emphasized that since that day she has never returned, and he expresses that he still loves her and wants her to come back to the matrimonial home. He testified that he is “ready to continue our marriage” provided the Petitioner’s family stays out of their personal issues.
9. Crucially, the Respondent acknowledged using physical force against his wife on multiple occasions. He stated:
- “I acknowledge that I have beaten her on several occasions, but only lightly and solely for the purpose of disciplining her – not in a harmful or aggressive manner”.
- He insisted he never intended to cause injury or fear, implying that any violence on his part was, in his view, within the limits allowed by Islamic teachings for correcting a disobedient spouse. He maintains that aside from these incidents, he fulfilled his responsibilities as a husband and father, and “never abandoned” the family financially or emotionally. (The Petitioner strongly disputes the claim that he never abandoned his duties, pointing to his total cessation of support to her in recent years and his barring the children from seeing her.)
10. The Respondent did not call any independent witnesses to support his allegations about the Petitioner’s family or her conduct. No relatives or neighbors testified on his behalf. His case rests largely on his own narrative that the Petitioner was influenced by her family to leave him, and that he is a victim of disrespect by in-laws rather than an aggressor. Under cross-examination by the



- Petitioner, the Respondent admitted that the family interference he complains of occurred only on a few “different occasions” over 21 years, but he maintained those incidents were decisive. He also accused the Petitioner of succumbing to “outside pressure” in seeking to end the marriage.
11. Despite admitting to uttering two divorces, the Respondent has not initiated any reconciliation or formal retraction of the talaq in the months since. In fact, elders from his side discouraged him from finalizing a divorce before, and he apparently heeded them until the October 2024 incident. Even after that, when elders and a Sheikh attempted to counsel a resolution, the Respondent failed to attend follow-up sessions. In his final remarks to the Court, the Respondent “left everything else to this Honourable Court” and requested that the Petitioner’s family stay out so that the couple could “try to live peacefully” again. Essentially, he asks for another chance at the marriage, while contesting the narrative that he has been cruel or neglectful beyond what he considers minor disciplinary measures allowed by faith.
  12. It is noted that the Respondent’s refusal to comply with interim community resolutions (such as vacating the home temporarily or paying the agreed compensation) was confirmed by the very elders who intervened. He did not present any evidence to refute those points. His stance appears to be that, notwithstanding his own actions, the marriage should continue and the Petitioner should return to the matrimonial home under his authority.
  13. From the pleadings and evidence on record, the Court frames the following key issues for determination:
    1. Dissolution of the Marriage: Whether the marriage between the Petitioner and Respondent has irretrievably broken down and whether a decree of divorce/talāq should be confirmed or issued by this Court, taking into account the Respondent’s pronouncement of talaq and the grounds of cruelty and non-maintenance alleged by the Petitioner.
    2. Custody of the Children: Who should be granted custody of the seven children of the marriage, and under what conditions, bearing in mind the welfare and best interests of the children as the paramount consideration.
    3. Maintenance and Support of the Children: What orders should be made regarding financial support for the children – including monthly maintenance, education expenses, medical care, and housing – and the apportionment of these responsibilities between the parents (in practice, primarily the father as per law and custom).
    4. Ancillary Relief: Any other orders or reliefs necessary to give effect to the foregoing (for example, conditions for visitation by the non-custodial parent, arrangements for the matrimonial home to ensure the children’s shelter, and any protective orders to ensure the peace).
  14. The Court will proceed to analyze each of these issues by applying the relevant law – *the Constitution* of Kenya 2010, statutory law (such as the *Kadhis’ Courts Act*), and the principles of Islamic law (Shari’ah, especially as interpreted in the Shafi’i school) – to the facts established by the evidence.
  15. At the outset, the Court notes that it has proper jurisdiction to hear and determine this matter. Article 170(5) of *the Constitution* of Kenya and Section 5 of the *Kadhis’ Courts Act* (Cap. 11) grant Kadhis’ Courts authority to decide questions of Muslim law relating to personal status, marriage, divorce, or inheritance in proceedings where all parties profess the Muslim religion. Both parties in this case are Muslim and were married under Islamic law, hence this Court is empowered to adjudicate their matrimonial dispute. In exercising this jurisdiction, the Court is guided by Islamic law (Shari’ah) on marriage and divorce, and by *the Constitution* and statutes of Kenya to the extent they apply. Section 6



of the *Kadhis' Courts Act* provides that the rules of evidence and principles of Muslim law shall apply in these proceedings. However, all witnesses – male or female – have been heard without discrimination, and factual findings are based on the credibility of evidence rather than the number of witnesses, as explicitly required by law.

16. Importantly, *the Constitution* of Kenya recognizes the institution of family and marriage while safeguarding fundamental rights within it. Article 45 of *the Constitution* affirms that “the family is the natural and fundamental unit of society” and shall be protected by the State. It further guarantees that parties to a marriage are entitled to equal rights at the time of the marriage, during the marriage, and at the dissolution of the marriage. This means that husband and wife have equal dignity and are subject to the same standards of respect and fairness, including when the marriage is ending. Additionally, Article 45(4) directs that marriages under any system of religious or personal law (such as an Islamic marriage) are recognized to the extent that they are consistent with *the Constitution*. Therefore, while Islamic law governs this dispute, the outcomes must not violate constitutional values – for example, the right to human dignity and freedom from abuse.
17. Under Islamic law, marriage (nikāh) is a sacred contract meant to be based on love, tranquility, and compassion (Qur’an 30:21). Both spouses have specific rights and obligations. The husband is obligated to maintain and care for his wife and children, and to treat his wife with kindness. The Qur’an in Surah An-Nisa 4:34 designates men as “protectors and maintainers” of women “because Allah has given the one more [strength] than the other, and because they support them from their means.” It goes on to advise that righteous women are obedient and guardians of the family’s honor, and instructs how a husband may deal with a wife’s serious misconduct – through admonition, then avoidance in bed, and as a last resort, a light disciplinary action – but if she cooperates, the husband must “seek not against them means [of annoyance]”. This verse in no way authorizes a husband to terrorize or oppress his wife; rather, classical scholars interpret it as permitting only the mildest discipline in extreme cases, and even then the Prophet (peace be upon him) strongly discouraged any violence. Indeed, a hadith recorded in Jami’ al-Tirmidhi states: “The best of you are those who are best to their wives”. Another hadith in Sunan Abi Dawud, when the Prophet was asked about a husband’s rights, replied: “Feed her when you eat, clothe her when you clothe yourself, do not strike her in the face, do not revile her, and do not abandon her except within the home.” These teachings make it clear that Islam enjoins men to treat their wives with respect, provide for them, and limits how they may respond to marital discord. Physical abuse, public humiliation, and neglect of maintenance are not condoned by the Shari’ah; they violate the command to live with one’s spouse in kindness (Qur’an 4:19) and the prophetic example of compassion.
18. In the present case, the Petitioner has convincingly proved that the Respondent subjected her to cruelty and failed to maintain her, especially in later years. The evidence of physical abuse is substantial. The Petitioner’s testimony of being beaten and insulted is supported by the Respondent’s own admissions – he conceded under oath that he “has beaten her on several occasions” (even if he tried to minimize it as “light” hitting for discipline). Any physical violence outside the narrow bounds of Qur’anic guidance (which allows only a symbolic light tap in private and forbids striking the face or causing injury) would amount to unlawful cruelty. The Respondent’s behavior – hitting his wife multiple times, including in public, and causing her evident fear and distress – crossed the line of what Islamic law permits, and it certainly violated her right to dignity under *the Constitution*. The Prophet ﷺ said to Muslim men: “Do not harm the female servants of Allah” and rebuked those who beat their wives, saying such men “are not the best among you.” The Respondent’s actions stand in stark contradiction to these principles. His justification that the beatings were intended as “discipline” is untenable. Nowhere does Islam allow a husband to abuse his wife under the guise of discipline. Even the Quranic verse 4:34, which is often misused in this regard, if read to its entirety, warns husbands that if their wives comply, they must



not pursue anger or means of hurting them further. In this case, the Respondent’s conduct became a pattern of aggression, not a one-time corrective measure. The Court is satisfied that the Petitioner was a victim of domestic violence, which constitutes a valid ground for divorce (faskh) in Islamic law due to darar (harm). A marriage is meant to offer protection and tranquility, not a venue for harm; as an Islamic legal maxim states, “No harm shall be inflicted or tolerated in Islam (la ḍarar wa la ḍirār).”

19. The Petitioner also established that the Respondent failed to provide maintenance (nafqa) as required. Under Shari’ah, the husband must provide his wife with food, clothing, housing and general financial support according to his means, as part of his qawwam (protector-provider) role. This obligation continues throughout the marriage. Here, the Petitioner testified – and the Respondent did not seriously dispute – that after the Respondent married a second wife, he completely stopped giving the Petitioner any personal upkeep money. For approximately nine years, she received no allowance, and in the last eight months since being chased from the home, she has been surviving at her parents’ charity with zero support from the Respondent. The Respondent claimed he “never abandoned his responsibilities,” but this is flatly contradicted by the facts. Even if he continued to feed the children in his custody, he admittedly left the Petitioner destitute. Islamic law considers such neglect a grave breach: the Qur’an 2:233 states that the father “must bear the cost of [the child’s] food and clothing on equitable terms”, and by extension must also support the nursing mother during marriage and even during the post-divorce waiting period. The Petitioner’s unrefuted statement is that the Respondent gave her no financial support at all for the past eight months while she was away, despite having the means to do so. This amounts to constructive desertion. Under Shafi’i jurisprudence, a wife has grounds to seek judicial dissolution if the husband persistently fails to maintain her, especially if he has means but willfully withholds support (this is analogous to darar, as a wife should not be left to hardship).
20. Kenyan law echoes these obligations. Article 45(3) of *the Constitution*’s guarantee of equal rights within marriage implies that a wife is not a servant at the mercy of the husband, but an equal partner entitled to material support and human respect. Moreover, Article 53(1)(e) of *the Constitution* provides that “every child has the right to parental care and protection, which includes equal responsibility of the mother and father to provide for the child, whether they are married or not.”. The Respondent’s abdication of support not only wronged the Petitioner but also indirectly the children, because a mother who is impoverished and distressed cannot properly cater to her children’s needs. The Court finds, therefore, that the Respondent fundamentally breached the marital contract by failing to maintain his wife and by engaging in cruelty. These breaches justify the termination of the marriage under both Islamic law and the law of Kenya.
21. In addition to the above grounds, we have the fact that the Respondent himself pronounced a ṭalāq divorce on the Petitioner in October 2024. The Petitioner produced the written divorce letter (through her testimony, as it is in her father’s custody) and described the pronouncement, which the Respondent forthrightly admitted. This raises the question: has the marriage already been dissolved by that talaq, and if so, what remains for the Court to do?
22. Under Islamic law, a husband has the prerogative of ṭalāq (unilateral divorce), but it is regulated and ideally not to be done unjustly. The Quran describes the proper procedure: “Divorce is to be pronounced twice, then [you must] retain [your wife] in a reasonable manner or release [her] with kindness”. In other words, after up to two revocable talaqs, the marriage can continue if reconciled, but after the third talaq, the divorce becomes irrevocably final (talāq mughallaz). In the case at hand, the Respondent uttered two talaq in one occasion (“I divorced her with two talak”). According to the majority of classical jurists (including the Shafi’i school), multiple pronouncements made together or in one encounter can count as that many divorces – here two divorces. The Respondent intended



at least to seriously repudiate the marriage at that moment, evidenced by handing over a written letter. He has not retracted the talaq during the ‘Iddah period (the three-month waiting period after divorce) and, in fact, the ‘Iddah has long expired with the parties still apart. By operation of law, at minimum one talaq became finalized when the waiting period elapsed without reconciliation. If indeed two valid talaqs were effected, the marriage bond has been severed (though technically it would be a baynuna sughra, meaning a minor separation after two talaqs – the parties could only reconcile now by contracting a fresh nikah, which the wife is unwilling to do).

23. The Respondent’s main argument regarding the talaq is that it was pronounced “in anger” and without deliberate intention, implying it should not count. The Court is not persuaded by this excuse. Anger is a common factor in many divorces; if every talaq uttered in anger were invalid, it would create chaos and reward volatile husbands. Islamic jurisprudence (Shafi’i) holds that ordinary anger does not nullify a divorce. A fatwa from a Shafi’i scholar on record states: “Anger is not an excuse, nor does it nullify the validity of a divorce. The only type of anger that would invalidate a pronouncement is rage to the point of insanity, where one loses awareness of one’s words.”. There is no evidence that the Respondent was in such an extreme state of mental incapacity when he divorced the Petitioner; by his own recollection, he was angry but fully aware (he remembers the incident in detail). He even took the step of writing it out, which indicates a conscious intent to finalize the act. The elders’ testimony that they “advised the letter could not be enforced as it was issued in anger” appears to have been an attempt at reconciliation by giving the Respondent a face-saving way to return from his pronouncement. But in law, that talaq did occur and is valid. The Respondent’s subsequent behavior – not providing for his wife, not meaningfully attempting to resume cohabitation – is consistent with a divorce having taken effect.
24. The Court therefore finds that the marriage stood effectively dissolved by at least two talaq as of late 2024. What remains is for this Court to formally confirm the dissolution and issue the Decree of Divorce (Fasakh/Talaq) to both parties, since the Petitioner has petitioned for that relief. In doing so, the Court fulfills the Petitioner’s right to equal dignity at dissolution (Constitution Article 45(3)) by recognizing her freedom to exit an abusive marriage on legally sufficient grounds. It also protects her from being trapped in limbo by the Respondent’s change of heart now. Shari’ah emphasizes that marriage is to continue in ma’ruf (good conditions) or end with ihsan (kindness). Here, sadly, the good conditions are long gone. The Quran also enjoins: “When you divorce women and they fulfill their term [‘iddah], either retain them in kindness or let them go in kindness. Do not hold them intending harm....” (Qur’an 2:231). The Respondent’s refusal to truly let the Petitioner go (by clinging to the marriage after pronouncing talaq, but without reforming his conduct) appears to be an attempt to hold on to her to her detriment, which the law does not countenance. In light of all the evidence, the Court is satisfied that the matrimonial bond between the parties has ruptured beyond repair. The legal threshold for dissolution – under Islamic law (persistent harm and valid talaq) and under Kenyan law (marriage irretrievably broken) – is met.
25. The welfare of the parties’ seven children is of paramount concern to this Court. Article 53(2) of *the Constitution* of Kenya provides that “a child’s best interests are of paramount importance in every matter concerning the child.” This constitutional principle aligns with Islamic law, which holds that custody (hiḍānah) decisions must be made to benefit the child’s upbringing, not to penalize either parent. Under Shafi’i jurisprudence, as well as most Islamic schools, the mother is generally given priority for custody of young children, due to the maternal bond and her typically greater role in daily care, so long as she is a fit and available custodian. The Shafi’i school specifically observes that there is no fixed age after which the mother loses custody; rather, a child remains with the mother until he or she is old enough to exercise choice, at which time the child may choose which parent to live with, subject to the court’s evaluation of the child’s best interests. In this case, the children’s ages were not



explicitly stated, but given a 21-year marriage, it is likely some are still quite young and others possibly teenagers. All are minors (the eldest would be at most around 20, and the youngest much younger). There is no evidence that any of the children are of an age or capacity to make an independent choice contrary to the default rule, nor that living with the mother would be detrimental.

26. On the contrary, the evidence indicates that the Petitioner is a devoted mother who until recently lived with and cared for all seven children. The Respondent forced a separation by making the environment intolerable for her. During the last eight months, the children have been in the Respondent's physical custody only because the Petitioner was unable to stay in the home. However, it is uncontested that the Respondent barred the children from even visiting their mother during this period. Such conduct is not in the children's best interests, as it effectively deprived them of maternal care and affection. There is no suggestion that the Petitioner is unfit as a mother – she has no record of mistreating the children, no immoral conduct, and in fact she endured hardship largely to protect them (staying in the marriage for 21 years and only leaving when the situation became unbearable). The Respondent's main grievance was with the Petitioner's relatives, not her parenting. Indeed, he professed that he loves her and presumably trusts her with the children if only her family "stays out." The Court takes judicial notice that in cases of domestic conflict, children often fare better with the parent who did not perpetrate violence, as that parent can provide a more stable and emotionally secure home. Here, the Respondent's abusive behavior would likely have negatively affected the children if they witnessed it (and evidence suggests they did witness discord and the mother's distress). The Petitioner's household (her parents' home, where she sought refuge) by contrast offers support and safety.
27. Islamic law's emphasis on the mother's right of custody is well exemplified by a famous incident in the time of the Prophet #: a woman came seeking custody of her child, and the Prophet told the father, "This is his mother, she is more compassionate and kind; you have no objection unless she remarries," thereby granting her custody. While each case must be decided on its own facts, the principle is that the mother's care is indispensable especially for younger children, unless disqualified by misconduct or inability. In Shafi'i fiqh, a mother would only lose custody if, for example, she is proven unchaste, mentally unsound, neglectful, or if she were to remarry a stranger and the child is of tender age – none of which applies to the Petitioner.
28. Therefore, considering the best interests of the children (maslaha) and the legal guidelines, the Court finds that custody of all seven children should rightly vest with the Petitioner. This will provide the children with maternal love and continuity of care. They have already been separated from her for many months; reuniting them with their mother will help restore their sense of security. The children also need stability: they should ideally remain in a familiar home environment, continue their schooling without disruption, and receive proper nurturing. The Petitioner, now freed from the stress of abuse, is in a better position to offer a nurturing home. On the other hand, leaving the children with the Respondent would risk exposing them to further tension – the Respondent has not demonstrated the temperament conducive to gentle parenting, given his admitted anger issues. Moreover, practically, the Respondent has another wife/family to juggle, whereas the Petitioner's focus would be solely on these children.
29. That said, the Court is mindful that children benefit from the involvement of both parents. The doctrine of equal parental responsibility (Article 53(1)(e) of *the Constitution*) means that even if one parent has physical custody, the other parent has a crucial role to play. The Respondent is the father; he evidently cares for his children and they likely have love for him as well. There was no evidence that he ever harmed the children directly. Thus, it is in the children's interest to continue having a relationship with their father, provided it is in a safe and structured manner. The Petitioner herself recognizes this, as she requested reasonable visitation for the Respondent rather than seeking to cut off contact. The



- Court will therefore grant the Respondent appropriate visitation rights. However, given the history of conflict, exchanges of the children must be handled in a manner that does not subject them or the Petitioner to further hostility. The parents must cooperate civilly when the father is exercising access, and the Respondent must refrain from involving the children in any disputes or speaking ill of the Petitioner in their presence (and vice versa). The success of the custody arrangement will depend on the parents' maturity and focus on the children's wellbeing.
30. Under both Islamic law and Kenyan law, the father has the primary obligation to financially maintain his children. This responsibility does not cease upon divorce. The Shari'ah position is unequivocal: "the father is responsible for the financial support (nafaqa) of his children," and if he fails to provide it, it is considered a debt due from him. This obligation covers all essentials – housing, food, clothing, education, healthcare, and general welfare – within the father's means. Qur'an 2:233, as noted, states that the father must provide for the mother and child according to what is reasonable. Kenyan law mirrors this in the *Children Act* and Article 53, imposing equal responsibility on both parents, though practically the non-custodial parent (often the father) is required to contribute maintenance to the custodial parent for the children's needs. *The Constitution* explicitly says that whether the parents are married or not, the child has a right to receive support from both.
  31. In the present case, the Petitioner has been the primary caregiver, and now with custody she will bear day-to-day expenses. The Respondent, as a father, must provide financial support to ensure the children's well-being. The Petitioner has requested a specific amount of Kshs. 15,000 per month for general upkeep of the seven children, in addition to full coverage of school fees, madrasa (religious education) fees, and medical costs. The Court considers this request reasonable and modest, given the number of children. There was no evidence that the Respondent cannot afford this – in fact, no evidence of his exact income was tabled, but the Respondent did not contest the figure in cross-examination. He has been a provider in the past (the Petitioner acknowledged that "the Respondent has generally provided for the children according to his means" before these troubles). Kshs. 15,000 per month for seven children translates to just over Kshs. 2,100 per child per month, which is quite minimal in today's economy for food, clothing, and basic needs. The Court is cognizant of the high cost of living and the need for children to have adequate nutrition and living conditions.
  32. Additionally, education is a vital need. Several children are presumably of school-going age. The Respondent, by law, must ensure they continue their schooling without interruption. Article 53(1) (b) of *the Constitution* guarantees every child the right to free and compulsory basic education (and in practice, any school fees or related costs would fall on the parents). The Petitioner's prayer that the Respondent be ordered to pay school and madrasa fees is well-founded. Likewise, medical expenses for the children should be borne by the father as part of maintenance, since he likely is the earning parent and the children's health is paramount.
  33. The Court will therefore order the Respondent to pay monthly maintenance of KES 15,000 to the Petitioner for the children, and to directly bear all expenses related to the children's education (school fees, uniforms, books, madrasa, etc.) and healthcare. This arrangement aligns with Islamic principles – a hadith of the Prophet # indicates that spending on one's family is an act of charity and duty for which one is rewarded. The Respondent is reminded that any maintenance he failed to pay in the past remains a debt to his children. 34. However, the Court's order will operate prospectively from the date of this judgment. The Respondent should be timely and consistent in these payments; he may channel school fees directly to the institutions and provide proof to the Petitioner, and similarly ensure medical bills are settled without delay.
  35. One contentious issue in this matter was the occupation of the matrimonial home. The Petitioner was living in that home (presumably owned by the Respondent) until she was chased out during the



October 2024 incident. The Respondent then remained in the home with the children and refused elders' suggestions to vacate or allow her back. With the divorce now confirmed, it is important to consider the children's need for shelter and stability. They should not be rendered homeless or forced into substandard housing. The evidence showed the Respondent actually has "other households" – at least one other wife/family – so he is not without options for accommodation. The elders specifically advised him to relocate to one of his other houses to allow the Petitioner and children to live peacefully, but he refused absent a court order. This Court will therefore make an order in the best interests of the children that the Petitioner (as custodial parent) shall be entitled to reside in the former matrimonial home with the children, and the Respondent must vacate that home within 14 days. This will minimize disruption in the children's lives – they can remain in familiar surroundings, near their school (if that home is near their schools), and with adequate space. It is effectively a form of child maintenance in kind, as housing is part of maintenance.

36. The Respondent shall remove his personal belongings from the house and may reside in his alternate accommodation (for example, with his second wife or elsewhere). The Court understands this may be inconvenient for him, but it is a fair outcome given that his conduct led to this situation and given that he asserted the house as "his" only to leverage control. Releasing the house for the children and mother is consistent with the Qur'anic injunction to "release [the wife] with kindness" at divorce. The Respondent is not losing ownership rights (if he owns the home) – those can be sorted out amicably or through a separate property cause if needed – but he is restrained from occupying it so that it serves as the children's residence. This order also aligns with Article 53(1)(c) which gives every child the right to shelter. The Respondent, as a father, must ensure that right is met.
37. In sum, the Court finds that the Respondent's actions amounted to matrimonial offenses under Islamic law – namely cruelty (physical and verbal abuse) and neglect of marital duties (maintenance) – which justify dissolving the marriage at the Petitioner's instance. Moreover, the Respondent's own issuance of a talaq, now well past the 'iddah, means the marriage bond has effectively ended. The Petitioner is entitled to a decree of divorce. The children's custody is awarded to the Petitioner as the more suitable and available parent, and the Respondent is obligated to contribute to their upbringing through financial support and loving involvement consistent with their welfare. These decisions are grounded in the ideals of fairness and compassion espoused by both Kenyan law and Islamic law. The Court has particularly kept in view the directive of the Holy Qur'an: "If you fear dissension between the two, send an arbitrator from his people and an arbitrator from her people. If they desire reconciliation, Allah will cause it between them." Here, arbitration was attempted repeatedly and failed; thus, we proceed to an amicable parting. The reconciliation having proved unworkable, what remains is to ensure each party's rights are protected and the children's interests upheld as the family transitions into a post-divorce phase.
38. Before pronouncing final orders, the Court notes that it has given both parties ample opportunity to be heard. The Respondent, despite his claims of wanting to save the marriage, did not produce any compelling plan or assurances that the Petitioner and children would be secure with him if they returned. In fact, under cross-examination, he acknowledged the core issue was not the Petitioner's behavior but his resentment toward her family. The Court cannot force an unwilling spouse (the Petitioner) to return to a situation where her safety and dignity are at risk. Marriage in Islam is meant to be a source of sukun (peace); forcing continuation in this case would likely result in further harm. As Imam Al-Shafi'i's juristic rulings would counsel, when darar (harm) is evident, fasakh (dissolution by a judge) is warranted to "eliminate the harm". The Court hereby proceeds to grant the reliefs that are justified by law and equity.



39. The Court is constitutionally and morally obliged to put the best interests of the children first in any order it makes. In evaluating the children’s best interests, the Court has considered their need for a stable home, emotional security, education, and loving guidance from both parents. The following factors have been weighed:
- Safety and Well-being:** The testimony clearly showed that the matrimonial home environment was marred by violence and conflict. It is not in the children’s best interest to be in a home where their mother is being abused or where there is frequent strife. Children who witness domestic violence can suffer long-term emotional and psychological harm. By granting custody to the Petitioner and ordering a separation of households, the Court aims to place the children in a calmer environment. The Petitioner at her parental home has support from relatives and no evidence of any form of abuse there. The Respondent’s presence, unfortunately, has been a trigger for conflict. Best interest requires that the children reside in an atmosphere free from fear and tension.
- Continuity of Care:** The Petitioner has been the primary caregiver for the children throughout their lives. Even during the separation, she has shown concern for their welfare (attempting to see them, which was thwarted by the Respondent). Continuity with their mother will ensure the least disruption in their nurturing. If the children were to remain with the Respondent, it would effectively deprive them of maternal care, which is against the normal developmental interest of a child, especially the younger ones. There is a universally accepted notion (reflected in Islamic law and modern child psychology) that young children, in particular, need their mother’s care. The Shafi’i jurisprudence we cited affirms this by keeping children with the mother until they reach an age of discernment. None of the children was demonstrated to have any special needs or preferences that would make the mother’s custody inappropriate.
- Emotional Bonds:** The children undoubtedly have love for both parents. Under best interests, preserving relationships with both is key. The Court’s orders will facilitate that: the children will live with the mother but have regular access to the father. The father’s positive involvement – such as visitation, attending school events, providing guidance – will benefit the children. Conversely, severing or straining their relationship with either parent would be detrimental. The Respondent did harm by blocking the children from visiting the Petitioner; that must not continue. Going forward, the Court expects the Petitioner to encourage the children to respect and communicate with their father, and the Respondent to respect the mother’s role and the children’s need for her. The children should never be made to feel that they must “choose” one parent over the other; their loyalty is to both, and parental cooperation is essential to their well-being.
- Education and Development:** Stability in schooling is a crucial aspect of best interests. By ordering the Respondent to pay school fees and allowing the children to stay in the current home (if that is near their schools), the Court aims to avoid disruption in their education. The children will continue at their current schools or better, and any transition (if needed) will be managed with their welfare in mind. The Petitioner, now not under daily stress of marital abuse, can better support their studies and religious upbringing (madrasa). The Respondent, by contributing financially and having visitation, can still oversee or check on their educational progress, which keeps him constructively involved.
- Health and Basic Needs:** The children’s best interests include having adequate nutrition, healthcare, and shelter. The maintenance order of Kshs. 15,000 monthly, while modest, will help the Petitioner feed and clothe them. The Respondent covering medical bills ensures any health issues are promptly treated. Housing is addressed by letting them live in the matrimonial home, which presumably is adequately sized and furnished for them, as opposed to possibly crowding into the Petitioner’s parents’ home. This arrangement is beneficial for the children’s physical comfort. The Court also notes that if any child has specific needs (medical condition, etc.), both parents must cooperate to address it.
- Loving and Peaceful Environment:** Ultimately, children thrive in a loving environment. Post-divorce, the onus is on the parents to ensure that their personal differences do not deprive the children of love or subject them to ongoing conflict. The best interests principle demands that the children be shielded from the acrimony of the divorce. The Court’s orders are designed to minimize points of friction (for example, separate living



arrangements to avoid confrontations). The parents are strongly warned that under Section 6 of the *Children Act* (2022), they have a duty to protect the child from all forms of physical or emotional harm. Going forward, any harassment or undue influence on the children (such as attempting to turn them against the other parent) would be viewed as a violation of the child's rights. Both parents should communicate civilly regarding the children – if direct communication is difficult, use a neutral intermediary or written communication focused solely on practical arrangements. The children should never again be put in a situation of witnessing violence or being torn in loyalties.

40. In conclusion, the Court is satisfied that the orders it will issue serve the children's best interests. They allow the children to have the care of their mother on a daily basis, the support and presence of their father regularly, and the financial resources needed for their growth. The arrangement is in line with Article 53 of *the Constitution* and the timeless Islamic emphasis on mercy and compassion toward children. The Prophet Muhammad # loved children and showed the example of being gentle with them; this Court expects both parents to emulate that example as co-guardians of these young souls. The paramount consideration has been and remains what will foster the children's happiness, security, and development into well-rounded individuals.
41. Accordingly, for the reasons detailed above, this Court makes the following orders in the interest of justice and fairness:
  1. It is hereby declared and ordered that the marriage between the Petitioner, MGD, and the Respondent, ADA, contracted in 2004 under Islamic law, is dissolved. The Court confirms the ṭalāq (divorce) pronounced by the Respondent on or about October 2024 as legally effective. A Decree of Divorce shall issue forthwith, effective today. The parties are no longer husband and wife under the laws of Kenya and Shari'ah.
  2. The Petitioner is hereby granted sole physical and legal custody of the seven (7) children of the marriage. The children shall reside with the Petitioner. The Petitioner is vested with the authority to make day-to-day and major decisions regarding the children's health, education, religion, and welfare, in consultation with the Respondent as appropriate. The Respondent shall have reasonable access and visitation rights to the children. This shall include, at a minimum, the right to spend time with them every alternate weekend (every two weeks) from Saturday morning to Sunday evening, and half of school holidays, unless otherwise agreed by the parties. The specifics of visitation (pickup/drop-off times and location) are to be worked out amicably between the Petitioner and Respondent, taking into account the children's school schedule and needs. In exercising visitation, the Respondent must not remove the children from Kinna/Isiolo County (or the jurisdiction of the Court) without written consent of the Petitioner or further court order. Both parties are restrained from speaking negatively about the other parent in the presence of the children or using the children to convey messages; the children should be exchanged in a peaceful, courteous manner. If any disputes arise regarding access, either party may apply to this Court for further directions.
  3. The Respondent shall pay to the Petitioner a sum of Kenya Shillings Fifteen Thousand (Kshs. 15,000) per month for the maintenance and upkeep of the children. This payment is to cater for food, clothing, utilities, and general daily needs of the seven children. The first payment shall be made by the 5th day of the month following this judgment (if judgment is in June 2025, then by 5th July 2025), and thereafter on or before the 5th day of each successive month. The payments shall be made without fail and may be deposited into an account designated by the Petitioner or via any other method the Petitioner specifies in writing. The Respondent shall provide proof of payment if requested. This order for monthly maintenance shall remain in force until each child attains the age of majority (18 years) or until further orders of the



court, whichever comes first. (Should any child pursue tertiary education or have special needs beyond 18, the parties may review the arrangement by consent or court application.)

4. In addition to the monthly maintenance above, the Respondent is responsible for all educational expenses of the children and shall promptly pay all school fees, tuition, required school uniforms and books, madrasa fees, and any other related costs to ensure the children's uninterrupted education. The Respondent shall also cover all reasonable medical and dental expenses for the children. For practical implementation: the Petitioner shall forward any fee notes or school invoices to the Respondent in a timely manner, and the Respondent shall pay them directly to the school/madrasa or service provider by the due dates. Similarly, for medical needs, the Respondent shall reimburse the Petitioner for any out-of-pocket medical costs she incurs for the children, within 14 days of presentation of receipts. Both parties should keep each other informed of any major health or education decisions. (It is noted that these obligations fall under the father's nafaqa duties in Islamic law and under the parental responsibility provisions of Kenyan law.)
5. In order to secure the children's right to shelter and stability, the Court directs as follows: the Petitioner and the children shall have exclusive possession of the former matrimonial home located in Kna North opp [Particulars withheld] Primary school. The Respondent is hereby ordered to vacate the said premises within thirty (14) days from today and remove his personal belongings. The Respondent is hereby directed to hand over the matrimonial house to the Petitioner, inclusive of all household items, namely beds, bedding, utensils, and any other furnishings customarily used in the home and shall not return to reside there or interfere with the Petitioner's quiet occupation of the premises, save for visitation periods as allowed (and even then, visitation should occur off-premises or in a manner that does not intrude on the Petitioner's residential peace, unless the Petitioner allows him on the premises for that purpose). If the Respondent has any legal title or ownership claim to the property, this order does not extinguish that title; it is a custody/maintenance-related arrangement. The Respondent's obligation is to ensure the children have housing – if he prefers to house them elsewhere of equal suitability, that could be considered by consent of the Petitioner or further order. In the meantime, the Petitioner and children are entitled to live in the current home. Local administration and officers of the law (if necessary) are directed to assist in the smooth handover of the house to the Petitioner, should the need arise. The goal is to avoid further confrontation – the Respondent is urged to comply voluntarily in the spirit of *ihsān* (benevolence). This arrangement will be reviewed only if circumstances materially change (for instance, if the Petitioner secures alternative accommodation and both agree to move, or upon the children reaching maturity).
6. The Respondent is restrained from harassing, threatening, or abusing the Petitioner in any manner, whether physically, verbally, or through electronic means. Likewise, the Petitioner shall refrain from provocations toward the Respondent. Both shall keep the peace and respect each other's personal space and dignity. They are reminded that they remain the joint guardians of their children and thus must model civil behavior. Any breach of this order could expose the offender to legal penalties, including under the *Protection Against Domestic Violence Act*, if applicable. The Court expects that, after this judgment, the parties will transition to a cooperative co-parenting relationship, putting past grievances behind for the sake of their children.
7. The parties are directed to fully comply with the above orders. In the event of difficulties or need for clarification, either party has liberty to apply to this Court for further directions.



The Court will retain supervisory jurisdiction to ensure the orders are effectuated in line with Islamic law and justice.

8. Either party who is aggrieved by any aspect of this judgment has the right to appeal to the High Court of Kenya within 30 days from the date hereof, as provided by law (Article 170(5) of *the Constitution* and Section 8 of the *Kadhis' Courts Act*). However, for the avoidance of doubt, the orders on custody and maintenance are effective immediately unless so ordered by High court.
9. No order as to costs is made, given the familial nature of the dispute (each party shall bear their own costs). The Court commends the elders and family members who attempted to mediate and urges the families of both parties to continue supporting the parties and the children through this transition. All involved should understand that this outcome is aimed at justice and compassion as taught by our faith – the marriage in dispute has ended, but a new dynamic of mutual respect in co-parenting must begin. The Prophet Muhammad (peace be upon him) said: “Whoever is not merciful to others will not be shown mercy.” Let mercy and fairness guide the parties henceforth.

It is so ordered.

**DATED AND DELIVERED AT GARBATULLA THIS 20TH DAY OF JUNE, 2025**

**Before:**

**HON. DADACHA ALI IBRAHIMSENIOR**

**RESIDENT KADHIGARBATULLA KADHI'S COURT**

In the Presence of:

MGD – Petitioner

ADA – Respondent

Osman Hussein – Court Assistant

