



WNO v BAR (Divorce Cause 4 of 2022) [2023] KEKC 1 (KLR) (11 January 2023) (Judgment)

Neutral citation: [2023] KEKC 1 (KLR)

**REPUBLIC OF KENYA
IN THE KADHIS COURT AT BUSIA
DIVORCE CAUSE 4 OF 2022
IN NYABOGA, SRK
JANUARY 11, 2023**

BETWEEN

WNO PETITIONER

AND

BAR RESPONDENT

JUDGMENT

1. The petitioner, WNO filed her petition on the August 30, 2022 against the respondent, BAR and she prayed against the respondent for orders:
 - a. That, the marriage between the petitioner and the respondent be dissolved.
 - b. That, the respondent to provide maintenance for the issue of the marriage between the petitioner and the respondent.
 - c. That, the respondent to bear the cost of this suit.
 - d. Any further relief the honourable court may deem fit and just.
2. The petition as well as summons to appear were both duly served upon the respondent *vide* affidavit of service file on November 14, 2022 and no entry of appearance was made within the prescribed period.
3. The matter came up for hearing on December 6, 2022 and only the petitioner was present before court and the matter proceeded being heard *ex parte*.
4. In her testimony, the petitioner stated that she and the respondent celebrated their marriage in accordance with islamic tradition on the January 6, 2018 in Malaba within Busia County in the Republic of Kenya.
5. After celebrating their marriage, the petitioner states that they both cohabited as wife and husband in Busia and the marriage was blessed with one issue, a girl RB.



6. The petitioner states that the respondent is used to disappear to Uganda and leaving her behind together with the minor for weeks and without providing them with their needs.
7. She states that when the respondent returns to their matrimonial home after disappearing, he abuses and assaults her because of being asked where he has been and why he has not been providing for his family.
8. The petitioner states that early 2022, the respondent sent her together with the minor from their matrimonial home to go and stay with her parents.
9. She states that the respondent later on sent a bodaboda person (motorcyclist) several times bringing all her belongings which were at the matrimonial home.
10. The petitioner states that she raised the matter to the respondent's parents in Kasese in the Republic of Uganda and the respondent did not show any interest in settling the dispute and as a result, they told me not bother with the respondent who has shown disregard to her and instead concentrate with her life and the minor.
11. The Qur'an states: 'Do not retain your wives with intention to harm them, and whoever does that has wronged himself.' (2:231). When it happens that the husband does not like his wife for some reason or no reason at all, he may either divorce her fairly or bear with her and retain her fairly and justly. He should not retain her with intention to oppress her or deny her right to remarry to a person of her choice.
12. The respondent's cruelty and without remorse to his family and at the same time not freeing her from the subsistent marriage is an indication of his ill intention of frustrating the petitioner.
13. From the evidence adduced, I'm satisfied that the petitioner has proved her case according to the required standard and thus give the following orders:
 - I. That the marriage celebrated between the petitioner and the respondent is hereby dissolved.
 - II. That the petitioner is hereby granted legal and physical custody of the minor.
 - III. That , the respondent to provide monthly Kshs 5,000 towards the maintenance of the minor.
 - IV. That no order as to costs.

DATED, SIGNED AND DELIVERED IN BUSIA (K) THIS 11TH DAY OF JANUARY, 2023

HON IDRIS N. NYABOGA

SENIOR RESIDENT KADHI

In the presence of:

Court Assistant: Hassan

petitioner: WNO

