



**BUSIA LAW COURTS**

**IN THE KADHI'S COURT AT BUSIA**

**DIVORCE CAUSE NO. KCDC/E003/2021**

**BETWEEN**

**FHK.....PETITIONER**

**VERSES**

**AAM.....RESPONDENT**

**JUDGMENT**

This divorce petition by one FHK referred hereinafter as the petitioner was filed on 13<sup>th</sup> of July 2021 against AAM referred hereinafter as the respondent.

The petitioner's prayer against the respondent being:

- 1. That the Honorable Court declare that the marriage between the petitioner and the respondent does not exist.***
- 2. That the Honorable court grant custody of minors to the petitioner.***
- 3. That the Honorable Court to compel the respondent to be providing for the issues of their marriage.***
- 4. That the Honorable Court to compel the respondent to pay the petitioner her dowry.***

Before the hearing of the case, the respondent had appeared before this court and confirmed that he was aware of this petition.

The court directed the respondent to file his defence before the hearing date.

When the matter came for hearing on the 23<sup>rd</sup> of September 2021, the respondent had not filed anything and only the petitioner appeared. This court adjourned the hearing of the matter to the 30<sup>th</sup> of the same month expecting that the respondent would have prepared himself.

When the matter came up for hearing on the 30<sup>th</sup> September 2021, again, only the petitioner appeared. Thus, the matter went on unchallenged.

Soon after that, the respondent filed his defence and for the interest of justice, this court gave directions for a fresh hearing.

The matter came up for hearing on the 19<sup>th</sup> of October 2021.

The petitioner who resides with her mother in Malaba within Busia County testified that she celebrated her marriage with the respondent in accordance with Islamic Traditions on the 16<sup>th</sup> of June 2016 in Sultan Hamud within Makeni County in the Republic of Kenya.

She states that after their marriage, she cohabited with the respondent as husband and wife and that the marriage was blessed with three issues:

**1. SA**

**2. MA**

### 3. MA

The petitioner testifies that the respondent had not been taking his responsibilities as a husband and a father. She states that the respondent is used to staying away from his family for months and not providing for their needs.

The petitioner states that when it reached a stage that she could not bear with the respondent, she raised her concerns to a sheikh (Hussein Ali) who had solemnized their marriage. She states that after a period of time, the Sheikh told her that he had called the respondent on phone to ask him about her concerns but the respondent told the Sheikh that he had divorced the petitioner.

The petitioner states that the Sheikh asked the respondent on the welfare of the children and the respondent agreed to provide Kshs. 22,000 every month. But instead, he has been sending her Kenyan Shillings twenty thousand only until June 2021 when he stopped.

The petitioner states that during their marriage ceremony, they had agreed together with respondent that her dowry is US dollars two 2,000 which he has not paid. She prays for order against the respondent to pay her the dowry.

She also prays that the respondent pays her back Kshs. 15,000 she spent for medication of the children.

She states that the Respondent is a truck driver within Mombasa and Nairobi.

The respondent who appeared through virtual, did not challenge the claims by the respondent. He states that he has no problem in providing for the children and also paying the petitioner her dowry except that the petitioner has been frustrating him by denying him access to the children.

He states that due to the economic difficulties being experienced by many people including himself, he will be providing Kshs. 15,000 monthly for the maintenance of the children as from the 7<sup>th</sup> of October 2021.

He also states that he will pay the petitioner her dowry in installments of Kshs. 5,000 monthly as from the same date until he completes.

He said that he is not going to pay what has been claimed to have been spent on medication for the children because the petitioner too has a responsibility towards the children.

The respondent prayed that he be granted access to his children and the petitioner to stop frustrating him.

There is no dispute that the parties herein were husband and wife under Islamic Traditions. There is also no dispute that parties were blessed with three children and that parties are no longer maintaining their matrimonial relationship.

The main issue to consider is the maintenance of the children who are residing with the petitioner in Malaba within Busia County.

The parties agree both that the respondent has been providing Kshs. 20,000 monthly as from the time they separated and which is an amount the petitioner has no problem with.

The petitioner has stated that her problem with respondent in regard to the children began when the respondent stopped sending the money.

The parties partially disagree on the monthly maintenance fee for the children. The respondent has been providing Kshs. 20,000 until he stopped that several months before this suit was filed. He now wants to be paying Kshs. 15,000 instead of the 20,000. He states that he is facing financial difficulties and that the petitioner too has a duty to contribute towards the children.

Islamic Law has laid down rules pertaining to the responsibilities of both the mother and father towards their children during marriage and even after marriage in case it ceases to exist.

***“... and their provision and clothing is a duty upon the father on reasonable basis. No person shall be tasked with a burden greater than he can bear. No mother shall be treated unfairly on account of her child nor the father on account of his child.”*** Quran 2:233

It has also been narrated by Aisha that Hindu the daughter of Utbah said: ***“ O Messenger of Allah, my husband Abu Sufyaan is a miser and does not provide what is sufficient to me and my son except what I take from him without his knowledge.”*** The messenger of Allah (P.B.U.H) told her: ***“ Take from him what suffices you and your son justly and reasonably.”*** Sahih Albukhaary: 5364

From the above texts and others, the consensus of the Muslim scholars is that the provision of children is a duty of the father in according to his means.

There is no dispute that the respondent earns but how much he earns and how much he spends is unknown to this court. Nothing was produced on how much he earns and spends.

From the testimony of the petitioner, the respondent had promised to be providing Kshs. 22,000 but instead provided 20,000 only for several months which the petitioner has no problem with.

From the above I do give the following orders:

- 1. That, the marriage between the petitioner and the respondent is hereby dissolved.*
- 2. That, the respondent to provide a monthly Kshs. 18,000 towards the maintenance of the children as from the 7<sup>th</sup> of November 2021.*
- 3. That, the respondent to pay the petitioner her dowry of US dollars 2,000 in installments of Kshs. 5,000 each month until he completes as from the 7<sup>th</sup> of November 2021.*
- 4. That, the respondent is hereby granted liberty to access the three children at reasonable times.*
- 5. That, no order as to costs.*

**DATED AT BUSIA THIS 9<sup>TH</sup> DAY OF NOVEMBER 2021**

**IDRIS N. NYABOGA**

**SENIOR RESIDENT KADHI**

In the presence of

The respondent who appeared virtually