



**REPUBLIC OF KENYA.**

**IN THE KADHI'S COURT AT MOYALE.**

**CIVIL CASE NO. 40 OF 2018.**

**FOT.....PLAINTIFF.**

**VERSUS-**

**IMH.....DEFENDANT.**

**JUDGEMENT**

1. The Plaintiff and the Defendant were married on 04/02/2017, their marriage was solemnized under provision of the Islamic law and consequently the parties were blessed with one (1) issue. and currently expecting their second child.

2. On 18<sup>th</sup> Dec 2018, the Plaintiff filed her Complaint praying for the following orders:-

- a) that the defendant be compelled to pay her agreed dowry.
- b).that the defendant be compelled to release her personal belonging.
- c).that the cost of the suit be grant.
- d) and other relief that court may deem fit to grant .

3. On 28<sup>th</sup> Dec 2018, the Defendant filed a response to the complaint wherein he denied the allegations and prayed for dismissal of the plaintiff's suit with cost but lamented that he is ready to pay her dowry.

4. The plaintiff testified on oath in court on the day of trial that after their marriage they cohabited as husband and wife in [Particulars Withheld] Sub County.

5. Their marriage was not peaceful which resulted to divorce and later she was sent home to her family place.

6. she also lamented that during her stay in the marriage she contributed towards well being of the family and lastly she stated that she is expectant beside taking care of 11 old baby in her parent house which is not conducive nor accommodative together with her parents.

And finally she requested the defendant be compelled to contribute towards maintenance and upkeep of the child together with rent Monthly ksh 15000/=

7. The Defendant also testified in court and stated that is ready to take responsibility of his child and the one the plaintiff is expecting by contributing ksh 5000/= per month.

8. Before the trial commence the court with it wisdom held a pre trial conferences and settle the issue concerning personal belonging of the plaintiff and her dowry.

8. On the issue of maintenance of the child Sec. 24 of the child act and the Constitution as well as Al hidaya put a duty on parents to maintain their children. That duty gives the minor a right to education and guidance, immunization, adequate diet, clothing, shelter and medical.

9. Sometimes, a plea is advanced by the father that he does not have the means to pay, for he does not have a job or his business is not doing well, or he's married to another wife.

10. These are only bad excuses and, in fact, they have no acceptability in law. If the father is healthy, able bodied and is in a position to

support himself, he is under the legal obligation to support his children, for children's right to receive maintenance under Chap. 2 V 233 of the Holy Qur'an, is an absolute right.

**11.** Grant of maintenance to children should be perceived as a measure of social justice Chap. 2 V 233 of the Holy Qur'an is a measure of social justice and is specially enacted to protect children and falls within constitutional sweep of Article 19(2) reinforced by Article 21(3) and Article 53 of the Constitution . It is meant to achieve a social purpose. The object is to prevent vagrancy and destitution. It provides a speedy remedy for the supply of food, clothing and shelter to the Children.

**12.** It gives effect to fundamental rights and natural duties of a man to maintain his children and parents when they are unable to maintain themselves.

**13.** This being the position in law, it is the obligation of the father to maintain his children. He cannot be permitted to plead that he is unable to maintain the children due to financial constraints as long as he is capable of earning.

**14.** Thus the responsibility of the father for the maintenance of his child is unconditional and absolute as such no father should be treated unfairly and or harmed on account of his child; physically, mentally or morally. In the circumstances defendant is ordered to look after the child of the marriage unconditionally since he is person of means.

In the result, I make the following orders:

1. That the Plaintiff is granted the custody, care and control of the child of marriage .
2. That the Defendant shall be at liberty to visit the minor at a reasonable and/or an agreed time of the day.
3. That the Defendant shall provide Kshs. 8,000/- monthly towards the maintenance of the child.
4. That the Defendant shall pay the dowry of the plaintiff before the eddat period lapse.
5. Each party shall bear its own costs.

It is so Ordered.

**Dated, Signed and Delivered in Moyale this 13<sup>th</sup> day of Feb, 2019.**

**Hon. A.D. WAKO**

**Senior Resident Kadhi**