



**REPUBLIC OF KENYA**

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

**BUSIA LAW COURTS**

**DIVORCE CAUSE NO. 01 OF 2018**

**FFG ..... PETITIONER**

**VERSUS**

**DMM ..... RESPONDENT**

**JUDGMENT**

CORAM: Hon. Jamal Imodoi Opacha (KADHI)

C/ clerk: Catherine W. Wepoh

Petitioner

Respondent - absent

**MARRIAGE**

The Petitioner in this divorce cause got married to the Respondent on 17<sup>th</sup> March 2015, their marriage was conducted in accordance with Islamic law in the Kadhis court at Busia and the parties were issued with the marriage certificate. The Petitioner filed her petition on 22<sup>nd</sup> March, 2018 seeking for her maintenance allowances and the minor. The petitioner prayed for the following orders:

- A decree for dissolution of marriage.
- An order for issuance of divorce certificate.
- An order for maintenance allowances, and medical expenses for the minor.
- An order for unpaid dowry/Mahr of Kshs. 49,000/=.
- An order for send-off fee of kshs. 10,000/= or,
- Any further relief this Honorable court will deem fit.

The said union was blessed with one issue namely;

1. HM 3 years old.

This petition was defended and proceeded by way of Defendant cause on 6<sup>th</sup> April 2018. During the hearing, the Petitioner gave evidence on the particulars of cruelty and negligence as contained in the petition. According to the Petitioner, the Respondent has been treating her in the manner which is not expected to be meted out from a spouse to another spouse in Marriage. She further stated that Respondent has been reluctant in solving matters affecting the development of the family.

**DIVORCE**

From the evidence of the parties it is common cause that both parties are in agreement on the fact that their marriage has broken down and as

a result the Respondent issued a written termination of their marriage dated 17<sup>th</sup> March, 2018 by the consent of both parties and both signed. Neither party seemed interested in reconciliation.

The two parties are no longer living together neither are they planning on reconciling. I have given due consideration to the application and the ground it's based on *vis a vis* the defence, the Respondent. *The court's attention was drawn to Holy Quran 2v. 231 wherein is stated that:*

**” ... either take them back on reasonable basis or set them free no reasonable basis but don't take them back to hurt them...”**

*The court's attention was also drawn to Abdulrahman's. The Islamic Law (1997 reprinting) pg. 168 where it stated that:*

**“ In Islam marriage is a contract and the contract should be made to work out but, not when it becomes humanly impossible to do so. Its only such unavailable circumstances that divorce is permitted under Sharia.**

And that: **” ..... when a marriage becomes impossible to work its better to separate amicable rather than drag on indefinitely making the family home a hell.”**

There is evidence adduced under oath by the Petitioner that the Respondent was on several occasions cruel to the Petitioner. This is manifest in physical and verbal and negligence. This conduct caused mental and psychological torture to the petitioner.

It's the view of the court that, Divorce since it's disintegrate the family union is of course a social evil, in itself but it's a necessary social evil. It's better to wreck the unity of the family than wreck the future happiness of the party by bonding them to a companionship that has become odious!

In short, the marriage is in existence in name and nothing more. It is a shell and hence it serves no useful purpose for it to stand.

### **CUSTODY**

The Petitioner's evidence was to the effect t that she is the most suitable parent to have custody of the minor. She has more time for the child than the Respondent.

In ascertaining which parent to award custody, court must be guided by what is in the best interest of the child. Section Article 53 (2) of the Constitution where it stated that:

**” A child's best interests are of paramount importance in every matter concerning the child.”**

### **MAINTENANCE**

The Respondent testified to this court that he will be able to provide Kshs. 10,000/- monthly towards the maintenance of the minor, the fact which was disputed by the Petitioner who asked the court to consider also the school going minor.

On the issue of maintenance of the minor, Section 24 of the Children's Act and the Constitution as a well as AL Hidayah, put a duty on parents to maintain their child. That duty gives the minor a right to education and guidance, clothing, shelter and medical.

### **MATRIMONIAL PROPERTY.**

The Petitioner submitted that during the subsistence of marriage she actively contributed to the acquisition of several matrimonial properties but no dispute on the same.

The Respondent denies some of the allegations brought against him by the Petitioner, and he stated that the Petitioner didn't perform well in her matrimonial home duties leaving the house help doing everything for her.

The respondent told this court that he was not deserting their marital home anyhow but just because of more duties sometimes allocated to him in the workplace, it's only that the Petitioner has more doubts on him.

The Respondent agreed to pay the dowry balance of Kshs. 49,000/- within 9 months and send of kshs. 10,000/=.

### **CONCLUSION**

The upshot of all the above, accordingly the judgment is entered as prayed against the Respondent for the following orders:

1. A decree is granted for the dissolution of marriage between the Petitioner and the Respondent.
2. Divorce certificate be issued.

3. The custody care and control of the minor of the marriage named herein before be granted to the petitioner.
4. The Respondent shall have unrestricted access of the child and the modality of such access be agreed upon.
5. The Respondent shall contribute Kshs. 10,000/= every month towards maintenance of the child effective from this month (April 2018).
6. The Respondent shall also clear the dowry balance of Kshs. 49,000/= before 31<sup>st</sup> December, 2018.
7. The Respondent shall pay the send-off fee of Kshs. 10,000/-.
8. The Respondent shall provide EDDAT maintenance to the petitioner for a period of 3 months on a reasonable scale.
9. Order to costs each party shall bear his/her own cost.

DATED and SIGNED at BUSIA this 9<sup>th</sup> day of April, 2018.

**HON. JAMAL I. OPACHA**

**KADHI**

**BUSLA LAW COURTS.**