

**DIVORCE CAUSE NO. 006 OF 2022**

## VERSUS

**BEFORE HONOURABLE JUSTICE DAVID MATOVU**

1 | Page



6. The Petitioner further stated that the Respondent withdrew from cohabitation with him on the 02<sup>nd</sup> day of March, 2022 and also left the home with the issues of the marriage.
7. That due to the uncertain and undesirable state of affairs, and irrevocable differences, the marriage has irretrievably broken down.
8. The Petitioner averred that there was no connivance, collusion or condonation between him and the Respondent.
9. The Respondent replied to the petition and averred that throughout the subsistence of the marriage, the Petitioner was abusive to the Respondent.
10. That however, there was a possibility of reconciling and mending the marriage and as such, there was no need for dissolution of the marriage.
11. That as regards custody of the children, the children are all of tender age and as such, they ought to be under the care of the Respondent. However, without prejudice, both parties can be granted joint custody of the children.
12. That in the premise, the petition be dismissed and instead an order for judicial separation be issued, the parties be granted joint custody of the children, the Petitioner be ordered to fully provide for the children's school fees, medical care, feeding, scholastic materials, shuttle transport and accommodation, costs of the petition and any other relief this Court deems fit.

### **Representation**

13. At the hearing of this cause, the Petitioner was represented by Mr. Kenneth Engoru while the Respondent was represented by Ms. Muhindo Harriet Kithura. Both parties were present.



## Issues

14. The parties consented on dissolution of the marriage, joint custody of the issues to the marriage and maintenance of the children, however, they disagreed on intervals/ times when each party or parent would have time with the children and left the same for determination by Court.

## Decision of Court

15. Article 31(4) of the Constitution provides that it is the right and duty of parents to care for and bring up their children.
16. Section 29 of the Divorce Act further provides that in dissolution of marriage, the Court may at any stage of the proceedings make such orders with respect to custody, maintenance and education of minor children of the marriage.
17. Further, section 3 of the Children Amendment Act is to the effect that the welfare principles and children's rights set out shall be the guiding principle in making any decision with regard to children.
18. In the case of **Pulkeria Nakaggwa versus Dominiko Kiggundu [1978] HCB 310**, Odoki Ag J (as he then was) stated that "**welfare in relation to custody of children should take into account all circumstances affecting the well-being and upbringing of the child and the Court has to do what a wise parent acting for the best interest of the child ought to do.**"
19. In the instant case, the parties have agreed on joint custody of the children, but have disagreed on the intervals on when each of them will have the children.



20. This Court had the opportunity of hearing from both parties and their suggestions on the times they would have the children and the same has been put into consideration.
21. The fact that the children are all girls and minors, who are studying very close to the Respondent's current place of abode, they will continue to stay with the Respondent during the school terms so as not to disorganize their academic life.
22. The Petitioner shall have access to the children during weekends of the school terms and during holidays.
23. During the long festive holiday (Christmas holiday), the parties shall share the time of having the children equally.
24. Each of the parties shall maintain the children while in their custody.

### **Conclusion**

In the final result, this petition succeeds on the following terms; -

- a) The marriage between the parties is hereby dissolved
- b) The parties are granted joint custody of the children in the following terms; -
  - i. The children will continue to stay with the Respondent during the school terms, with visitation rights to the Petitioner during weekends of school terms.
  - ii. The Petitioner shall have physical custody of the children during school holidays.
  - iii. The parties shall equally share the long festive "December" holiday.
  - iv. Each party shall maintain the children while in their custody.
  - v. The Petitioner shall continue to provide school fees and medical care for the children.

- vi. The Respondent shall provide scholastic materials and any other incidental needs of the Children.
- c) Each party shall bear its own cost of this petition.

I so order.

Dated this 25<sup>th</sup> day of October 2023

  
David Matovu  
**JUDGE**