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**IN THE COURT OF ZAHIR KHAN, FAMILY JUDGE/GUARDIAN
JUDGE-I, KALAYA, DISTRICT ORAKZAI**

Petition No.....1/Minor Custody

Date of institution.....06.12.2021.

Date of Decision.....27.02.2023.

Saif Ur Rehman S/O Fazal Manan, R/O Qaum Sheikhan, Village Masood
Pakha, District Orakzai.

.....*Petitioner.*

Versus

Mst. Rehmana Bib Ex-wife of Saif Ur Rehman, Qaum Sheikhan, Village
Masood Pakha, District Orakzai.

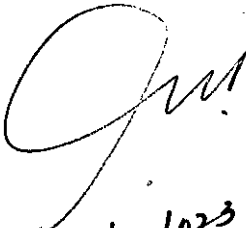
.....*Respondent.*

PETITION FOR CUSTODY OF MINOR.

JUDGEMENT

27.02.2023

Brief facts of the case are that petitioner Saif Ur Rehman has filed the instant petition against respondent Mst. Rehmana Bibi, for the custody of his minor son, namely Hazrat Ullah contending that marriage of petitioner was solemnized with respondent and in the year 2005, petitioner divorced the respondent. Respondent took with her minor son Hazrat Ullah to the house of her brothers. Respondent is a careless lady and she is unable to raise and educate the minor properly, therefore, future of the minor is at stake. That, it is in the best interest of the minor to live with petitioner because respondent has no source of income and as such the minor will be deprived of education. That petitioner intends to educate the minor, and it is


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possible only when the custody of minor is given to him, hence the instant petition.

Respondent was summoned, who appeared and contested the petition by filing written reply wherein, she denied the version of the petitioner and objected the same on so many legal and factual grounds.

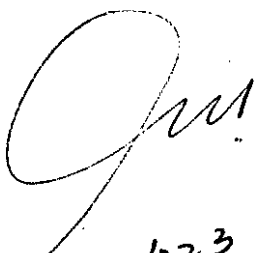
Pleadings of the parties were reduced to as many as following issues:

ISSUES: -

1. Whether the petitioner has got the cause of action?
2. What is the welfare of the minor for the purpose of custody?
3. Whether petitioner is entitled to the custody of minor
namely Hazrat Ullah?
4. Relief.

After submission of list of witnesses, parties were directed to produce their evidence. Parties produced their respective evidence.

Qeemat Khan and Shams Ur Rehman, relatives of petitioner appeared and deposed as PW-01 and PW-02 respectively and supported the version of the petitioner on oath. Copies of their CNICs are Ex. PW-1/1 and Ex. PW-2/1 respectively.


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In support of his claim, petitioner, Saif Ur Rehman appeared and deposed as PW-03 and reproduced the facts narrated in the petition on oath.

Thereafter, evidence of the petitioner was closed.

On the other hand, respondent Rehmana Bibi appeared and deposed as RW-01. She denied the claim of petitioner asserting that minor Hazrat Ullah is living happily with her and requested for dismissal of the petition. Copy of her CNIC is Ex. RW-1/1.

Hazrat Ullah appeared as RW-02 who supported the version of respondent.

Thereafter, evidence of the respondent was closed.


With the valuable assistance of the learned counsel for the parties I have gone through the record.

My issue wise findings are as under:

ISSUE NO.2 & NO. 3

Both these issues are interlinked, therefore taken together for simultaneous discussion.


Petitioner is seeking the custody of his minor son, namely Hazrat Ullah contending that marriage of petitioner was solemnized with respondent and in the year 2005, petitioner divorced the respondent. Respondent took with her minor son Hazrat Ullah to the house of her


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 brothers. Respondent is a careless lady and she is unable to raise and educate the minor properly, therefore, future of the minor is at stake. That, it is in the best interest of the minor to live with petitioner because respondent has no source of income and as such the minor will be deprived of education.

On the other hand, defence of respondent is that petitioner divorced her when her minor son was only few days/month old and since then minor is happily living with her. Minor is student of 9th class. She has lastly requested for dismissal of the petition.

Record transpires that respondent was divorced by petitioner when minor Hazrat Ullah was only few days/month old. Minor is student of 9th class and he is happily living with her mother and uncles. Petitioner, in his cross examination himself admitted that if his minor son does not want to live with him, he has got no objection on his custody with her mother. Minor Hazrat Ullah has categorically stated that he is happily living with his mother and uncles. On the other hand, petitioner has a second marriage from whom he has five children. Respondent has not entered into second Nikah. The welfare of minor is that respondent being women would take care of the needs of her minor son in better way than the petitioner. From the date of his birth, the minor has been in the custody of her mother. Prime


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consideration for deciding the application of custody of minor is the welfare of minor and nothing else. The minor is living with respondent/real mother since his birth and thus, has developed great love and affection with her. If at this stage, his custody is disturbed, it would adversely affect his upbringing. Respondent is the real mother of the minor and there is no substitute of real mother. Lap of mother is considered as cradle of guard, therefore, in the presence of real mother, it would be very harsh for the minor to be left at the mercy of his step-mother who has five children of her own from the petitioner/father. As far as involvement of minor in criminal activities is concerned, nothing to this effect was brought on record in shape of FIR or complaint against the minor. Welfare of minor remains with the respondent, resultantly, both these issues are decided against the petitioner and in favour of respondent.

ISSUE NO.01 & NO. 04

As a result of my issue-wise findings, the instant petition for the custody of minor fails. Same is therefore, dismissed. Parties are left to bear their own cost. File be consigned to record room.

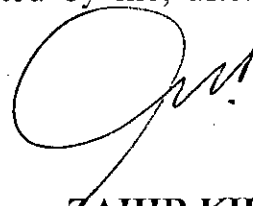
Announced:

27.02.2023


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CERTIFICATE: -

Certified that this judgment consists of six pages, and each page has been read over, checked and signed by me, after making necessary correction, wherever necessary.



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Family Judge/Guardian
Judge-I, Kalaya