

## WHAT IS THE CURRENT STATUS OF ISLAMIC MARRIAGES (NIKAH) IN THE UK?

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Under English law, a marriage ceremony can be valid, void or a non-marriage. A valid marriage, within the scope of the Marriage Act 1949 ("the 1949 Act"), may be ended by way of a decree of divorce. A person whose marriage is void because of the failure to comply with the required formalities under Section 11 of the Matrimonial Causes Act 1973 ("the 1973 Act") is entitled to a decree of nullity. A non-marriage cannot be ended legally as it never existed as a matter of law.

### **Akhter v Khan and another [2020] EWCA Civ 122 – Summary of the facts**

The Petitioner and the Respondent had an Islamic marriage ceremony (a Nikah) on 13 December 1998 at a restaurant in London. The parties had agreed that the Nikah ceremony would be followed by a civil marriage ceremony and understood that without such a ceremony they would not be legally recognised as married under English law. In 2016, the parties separated.

The Petitioner issued a petition for divorce in November 2016 and claimed a decree of nullity under the 1973 Act. The Respondent contended that the parties were not legally married and that the Nikah was of no legal effect and that Petitioner was therefore not entitled to a decree of nullity.

The central issue in this landmark case was whether the Petitioner who had an Islamic marriage ceremony which did not comply with the requirements of English marriage law, was entitled to a decree of nullity under section 11 of the 1973 Act and therefore a right to apply for financial provision against the Respondent. The Court requested for the Attorney General to intervene in the proceedings. He argued that the Petitioner was not entitled to a decree of nullity because the ceremony did not create a void marriage.

### **Judgment**

Mr Justice Williams concluded that the marriage was a void marriage within the scope of section 11 of the 1973 Act. He considered the effect of Articles 8 and 12 of the European Convention on Human Rights and concluded that they led to a more flexible view of marriage as a process rather than a single ceremony. The Judge expressed that the nature of the Nikah ceremony bore

all the hallmarks of a marriage in that it was held in public, witnessed and officiated by an Imam. The Judge took into account that the parties intended to include a civil ceremony at a later stage, which would have created a valid marriage. The interests of the children was also the primary consideration.

## **Appeal**

Although the Petitioner and the Respondent reached a settlement, the Attorney General appealed the decision of Mr Justice Williams.

The Court of Appeal set aside the order of Mr Justice Williams and unanimously allowed the appeal from the Attorney General. The Court found that, in this case, no marriage ceremony took place in respect of which a decree of nullity could be granted.

## **The Court of Appeal held:**

1. that a ceremony can take place called a “non-qualifying ceremony”. This does not create a marriage, or even a void marriage, under English law and so do not entitle a party to a decree of nullity or financial remedies. The Court suggested that the term non-marriage be referred to as a ‘non-qualifying ceremony’ to signify that they are outside the scope of both the 1949 and the 1973 Acts.
2. that the parties Nikah ceremony did not create a void marriage because it was a non-qualifying ceremony. The parties were not marrying under Part II of the 1949 Act. The ceremony was not performed in a registered building. No notice had been given to the superintendent registrar, no certificates had been issued, and no registrar or authorised person was present at the ceremony. The parties knew that the ceremony had no legal effect and that they would need to undertake another ceremony that did comply with the relevant requirements in order to be validly married. The determination of whether a marriage is void or not cannot, in the Court’s view, be dependent on future events, such as the intention to undertake another ceremony or whether the parties did or not have children.

### **How does this Judgment impact on financial remedies?**

The Court has confirmed that a Nikah marriage is a non-qualifying ceremony, meaning that spouses have no redress to the courts for a division of assets if the relationship breaks down. For one party this judgment brings distinct advantages in seeking to protect their assets in any way. Sadly, it also serves as a distinct disadvantage to a party who cannot then make a financial remedy application following the breakdown of their Islamic marriage.

If you would like to speak with one of our specialist team of family lawyers who have in-depth experience dealing with divorce and financial remedy call us on [0330 822 3451](tel:03308223451) or request for one of the team to [call you back](#) online.

