

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT GULU
DIVORCE CAUSE NO. 001 OF 2018**

ROBIN MEATON=====APPLICANT

-VERSUS-

ACAYO PROSCOVIA=====RESPONDENT

BEFORE: HON. MR. JUSTICE PHILLIP ODOKI

JUDGMENT

Introduction:

[1] The Petitioner instituted this petition seeking the orders of this court that, his marriage with the Respondent be dissolved; he be granted the custody of the children of their marriage; the Respondent be ordered to pay for the custody of the children; and the Respondent be ordered to refund to him ½ of the money he spent towards purchasing land at Ariaga, in Gulu District.

The Petitioner's case:

[2] The Petitioner is a Danish Citizen and the Respondent is a Ugandan citizen, domiciled in Uganda. They have three children together, that is, Aron Meaton; Esther Meaton and Samuel Meaton. On the 27th November 2014 the Petitioner and the Respondent entered into a civil marriage before the Registrar of Marriages as per the marriage Act. After the solemnization of their marriage they lived as husband and wife and he bought land at Ariaga, in Gulu District. However, since 2016 the Respondent has subjected him to cruelty, committed adultery and they are currently living separately. He pleaded that the acts of the Respondent have caused him pain and anguish.

Respondent's case:

[3] The Respondent did not file any reply to the petition despite being duly served with summons to answer the petition.

Issues:

[4] The issues for the determination of this court are:

1. Whether there are any grounds for divorce.
2. Whether the Petitioner is entitled to the remedies sought.

Legal representation and submissions:

[5] At the hearing, the Petitioner was represented by Ms. Roselyn Kunihiro of M/S Kunihiro and Co. Advocates. Counsel for the Petitioner did not make any legal submissions.

Burden and standard of proof:

[6] The burden of proof in civil matters lies upon the person who asserts or alleges. Any person who, wishes the court to believe the existence of any particular fact or desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he or she asserts, must prove that those facts exist. (See section 101, 102 and 103 of the Evidence Act Cap 6 of the laws of Uganda). The opposite party can only be called to dispute or rebut what has been proved by the other party (See *Sebuliba versus Co-operative Bank (1982) HCB 129*). The standard of proof required is on the balance of probabilities. In *Miller versus Minister of Pensions (1947)2 ALL ER 372* Lord Denning stated;

“That the degree is well settled. It must carry a reasonable degree of probability, but not so high as is required in a criminal case. If the evidence is such that the tribunal can say: ‘we think it is more probable than not,’ the burden of proof is discharged, if the probabilities are equal, it is not.”

Evidence adduced:

[7] The Respondent did not attend the hearing despite being aware of the hearing date. The matter thus proceeded *ex parte*. The Petitioner testified as P.W.1. He did not call any other witness. He testified that he met the Respondent in 2009. They fell in love and got three children, that is, Aron Meaton who was born in 2011, Esther Meaton who was born in 2013 and Samuel Meaton who was born in 2016. On the 27th November 2014 they got married at the District Registrar’s office at Gulu. He tendered in court their Marriage Certificate which was admitted in evidence as PE1. He testified that in 2014 they relocated to Denmark and lived there for 1 and ½ years then they relocated to Uganda. They were happily married until on the 17th of May 2016 when the Respondent committed adultery with another man called Martin Jensen and she became pregnant with his child. At the time of his testimony she was around 7 months pregnant. He testified that from the 17th of May 2016 the Respondent moved away from their matrimonial house with all the children and deserted him. All attempt to reconcile with her were futile. He prayed that he should be given the custody of the children. He further

testified that during their marriage, the family of the Respondent gave him land at Araiga in Gulu District. He contributed UGX 20,000,000/= for building a house on that land. He stated that he sent the money through the bank account of the brother of the Respondent called Loktek Francis. He tendered in evidence the bank transfers / remittances as PE2.

Consideration and determination of the court:

Issue 1: Whether there are any grounds for divorce.

[8] Section 4 of the **Divorce Act, Cap 249 of the laws of Uganda** sets out separate grounds for divorce for men and women. However, the Constitutional Court in **Uganda Association of Women Lawyers (FIDA) & 5 Others V Attorney General Constitutional Petition No 2/2003** found that section 4 of the Divorce Act was inconsistent with and in contravention of Article 31 (1) (b) of the Constitution which provides that a man and a woman are entitled to equal rights in marriage, during marriage and at its dissolution. The court stated that the effect of the decision is that all grounds of divorce mentioned in section 4(1) and (2) of the Divorce Act are available to both parties to a marriage. See also **Dr. Specioza Wandira Kazibwe V Engineer Charles Nsubuga Kazibwe Divorce Cause No. 03/2003.**

[9] The evidence of the Petitioner stated in paragraph 4 above clearly proves that the Respondent is guilty of adultery with Martin Jensen and has deserted the Petitioner for over 7 years. The Respondent did not adduce any evidence to rebut the evidence of the Petitioner. I therefore find that the petitioner has proved to the required standard that there are grounds for dissolution of his marriage with the Respondent.

Issue 2: Whether the Petitioner is entitled to the remedies sought.

[10] Given that the Petitioner proved grounds of divorce, he is entitled to a decree nisi for the dissolution of the marriage.

[11] On the prayer for custody and maintenance of the children of the marriage, Section 29 of the Divorce Act provides that in suits for dissolution of marriage, or for nullity of marriage or for judicial separation, the court may at any stage of the proceedings, or after a decree absolute has been pronounced, make such order as it thinks fit, and may from time to time vary or discharge the orders, with respect to the custody, maintenance and education of the minor children of the marriage, or for placing them under the protection of the court.

[12] The decision whether to grant custody to the Petitioner or to the Respondent has to be based on the welfare principles as set out in Section 3 of the Children Act, Cap 59 of the laws of Uganda as amended by the Children (Amendment) Act, 2016. They are:

- “(a) the ascertainable wishes and feelings of the child concerned, with due regard to his or her age and understanding;*
- (b) the child’s physical, emotional and educational needs;*
- (c) the likely effects of any change in the child’s circumstances;*
- (d) the child’s sex, age, background and any other circumstances relevant in the matter;*
- (e) any harm that the child has suffered or is at the risk of suffering; and*
- (f) where relevant, the capacity of the child’s parents, guardian or any other person involved in the care of the child, and in meeting the needs of the child.”*

[13] In this case, the Petitioner did not adduce any evidence to prove any of the above guiding principles in order to assist the court in determining the best interest of the children. No evidence was even adduced as to the current whereabouts of the children and whether they are within the jurisdiction of this Court or not. I therefore decline to exercise my discretion to grant the remedy of custody and maintenance.

[14] On distribution of matrimonial property. The only matrimonial property which was mentioned by the Petitioner was the land at Ariaga in Gulu District. His testimony that the land was given to him by the family of the Respondent and he contributed UGX 20,000,000/= for building a house on that land was not controverted by the Respondent. In my view, his prayer that he be refunded ½ of the money he contributed for the construction of the house is reasonable and it is accordingly awarded.

Orders:

[49] In the end, after carefully considering the merits of this case, the following orders are hereby made.

1. A decree *nisi* is hereby granted for the dissolution of the marriage between the Petitioner and the Respondent.
2. The Respondent is hereby ordered to pay the Petitioner UGX 10,000,000/= which is ½ of the money he contributed for the construction of the land at Ariaga, in Gulu District.

3. The amount in paragraph 2 above shall attract interest of 15% per annum from the date of this judgement till payment in full.
4. Costs of the petition are awarded to the Petitioner

I so order.

Dated and delivered by email this 8 day of April, 2024.

A handwritten signature in blue ink, appearing to read 'P. Odoki', with a long horizontal stroke extending to the right.

Phillip Odoki

JUDGE