THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

[Coram: Egonda-Ntende & Musota, JJA and Kasule, Ag JA]

Civil Appeal No. 160 of 2018

(Arising from High Court Divorce Cause No. 70 of 2016)

BETWEEN

Rebecca Nagidde ==========Appellant

AND

Charles Steven Mwasa ==========Respondent

(*On appeal from the Judgment of the High Court of Uganda (Family Division), Matovu, J., delivered on the 20th February 2018*)

JUDGMENT OF FREDRICK EGONDA-NTENDE, JA

Introduction

[1] The appellant filed High Court Divorce Cause No. 70 of 2019 against 2 respondents seeking to dissolve her marriage with the respondent in this appeal on the grounds of cruelty and adultery. She cited in the High Court the respondent no.2 as the person the respondent in the appeal had committed adultery with and produced one child. The respondent no.1 opposed the petition and filed a cross petition seeking an order of dissolution of the marriage on the ground of cruelty. The respondent no.2 in the High Court, in answer to the petition, admitted to have had a relationship with the respondent and produced one child. She was not made a party to the appeal to this court.

[2] The parties to this appeal solemnised their marriage on 29th November 2008 at All Saints Cathedral in Kampala. During the pendency of their marriage they

had two issues and acquired several properties jointly and severally. The learned trial Judge unilaterally took the view that there were irreconcilable differences between the petitioner and the respondent and concluded, on its own, that the marriage between the two was irretrievably broken down. The learned Judge required counsel for the petitioner and the respondent to present a decree nisi for his signature on 13th September 2017. Counsel complied and presented a decree nisi which the learned trial judge signed thus dissolving the marriage between the appellant and the respondent. The learned trial Judge then called the respondent, put him on oath, examined him and thereafter directed counsel to file written submissions to deal with the custody of children and matrimonial property. Thereafter the learned trial Judge went on to determine the issues of custody of the children and the distribution of the matrimonial property.

[3] The trial court in its decision granted the respondent primary custody of the children and the appellant a right of visitation at least once every month upon adequate notice to the respondent. The respondent was granted exclusive possession of the matrimonial home located at Kyadondo Block 220 Plots 1942 and 1946 in Kiwatule and he was ordered to pay half the value of the property to the appellant within six months after valuation, since the property was jointly owned by the appellant and respondent. The learned trial judge ordered that all the properties that were severally owned were to remain the exclusive properties of the respective owners and the properties that were jointly owned were to be valued by the Chief Government Valuer and either of the parties were to pay half of the value of the property to the other within six months. With regard to the company, the respondent was ordered to pay the appellant the percentage of shares she owned in the company upon valuation of the company's assets.

[4] The appellant dissatisfied with the decision of the trial court has appealed to this court on the following grounds:

> '1. That the Learned Trial Judge erred in law and fact to grant the primary custody of the children Christian Wamai (12 years) and Timothy Mwasa (8 years) to the Respondent.

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> '1. That the Learned Trial Judge erred in law and fact to grant the primary custody of the children Christian Wamai (12 years) and Timothy Mwasa (8 years) to the Respondent.

2. Without prejudice to ground 1, the Learned Trial Judge erred in law and fact to grant the appellant who is the mother of the children visitation rights restricted to ONLY once (1) every month and upon giving the respondent adequate notice of such visit.

3. The Learned Trial Judge erred in law and fact to grant the Respondent exclusive possession of the matrimonial home comprised at Kyadondo Block 220, Plot 1942 and 1946 at Kiwatule a property that is jointly owned by the Appellant.

4. That the Learned Trial Judge erred in law and fact to order payment of ½ the value of the matrimonial home comprised in Kyadondo Block 220, Plot 1942 and 1946 at Kiwatule to the appellant which in effect would involuntarily deprive the appellant of her property.

5. That without prejudice to ground 4 above, the Learned Trial Judge erred in law and fact to order valuations to be done by the chief government valuer and also for payment to the Appellant to be made within a year by the Respondent.

6. That the Learned Trial Judge erred in law and fact in failing to make a finding as to whether properties comprised in Kyadondo Block 220 Plot 808 at Kiwatule; 3(b) Unit 53 Condominium plan, number 0051 Block B, Plot 2A-3A Luthuli Close Bugolobi; Block 220, Plot 1552 at Kyadondo and Block 228, Plot 1513 at Mbalwa were matrimonial property.

7. That the Learned Trial Judge erred in law and fact to order that in computing the 30% share of the Appellant in Candy Investments Limited, the valuation of its assets has to be done by the Respondent and the payments to made within a year.

8. That the trial Court erred in law and fact in condemning the Appellant unheard and denying her the right to a fair hearing of

the Divorce Petition by failing to take evidence and hear witnesses, thus reaching a wrong conclusion.

9. That the learned trial judge erred in law and fact when he adopted and or directed to use a procedure at the hearing that was inconsistent with the rules of procedure.'

[5] The respondent opposes this appeal.

Submissions of Counsel

[6] At the hearing, the appellant was represented by Mr. Byamukama Jude and the respondent was represented by Mr. Nsengiyunva Deus.

[7] With regard to grounds 1 and 2, Mr. Byamukama submitted that the trial judge's decision to grant primary custody to the respondent on the basis that he had been in the lives of the children since the parents developed a marital dispute and had the means to provide for the children's basic needs is a misdirection of the law in light of recent jurisprudence. He relied on Otto v Edyline Sabrina Pacific [2015] UGCA 37 for the proposition that both parents should be given joint custody of the children unless it is in the best interest of the children. Mr. Byamukama submitted that the decision is premised on Article 31 of the Constitution and the welfare principle enunciated in the Children Act.

[8] He submitted that both parents are entitled to have a say in the upbringing of their children and that the visitation right of once a month granted to the appellant does not allow her to live with her children. Counsel for the appellant submitted that because of this right, this court in the case of Otto v Edyline Sabrina Pacific [2015] UGCA 37 granted the parent, who had been previously limited to access of once a month, access to his children on a weekly basis plus one holiday a year. Mr. Byamukama prayed that this court should increase the appellant's access to the children.

[9] With regard to grounds 8 and 9, counsel for the appellant submitted that the trial judge in disposing of the matter adopted a procedure that is alien to the

rules of procedure. He averred that the parties did not lead any evidence concerning the matter and that the trial judge directed them to file written submissions with the relevant annexures. He referred to pages 265 to 270 of the record of proceedings in the trial court. Counsel for the appellant was of the view that there was no trial basing on Order 18 of the Civil Procedure Rules. He stated that the trial court did not give reasons for the departure from the procedure laid down by the law. Mr. Byamukama argued that the directive of the trial judge to the parties to attach to the submissions the documents they were to rely on was improper because it allowed the parties' counsel to adduce evidence. He also relied on the case of Bishop Balagadde Ssekadde & 5 others v Moses Wamala & 2 others Court of Appeal Civil Appeal No. 27 of 2011 (unreported).

[10] In reply to grounds 8 and 9, counsel for the respondent submitted that there was a trial. He submitted that it was the choice of the appellant to open the trial with the case of the respondent and that it was the appellant's choice not to give her testimony in court. Mr. Nsengiyunva submitted that the parties consented to the divorce but admitted that a trial was not conducted in regard to the said issue.

Analysis

[11] As a first appellate court, it is our duty to re-evaluate the evidence on record as a whole and arrive at our own conclusion bearing in mind that the trial court had an opportunity to observe the demeanor of the witnesses which we do not have. See Rule 30 of the Judicature (Court of Appeal Rules) Directions S I 13-10, Banco Arabe Espanol v Bank of Uganda [1999] UGSC 1, Rwakashaija Azarious and others v Uganda Revenue Authority [2010] UGSC 8.

[12] As this was a divorce action it was governed by both the Divorce Act as well as the Civil Procedure Act, and the rules made thereunder. Among other things the Divorce Act provides the grounds upon which divorce of the parties to a matrimonial union maybe considered and determined. Prior to Uganda Association of Women Lawyers and 5 Others v Attorney General, Constitutional Petition No. 2 of 2002 (unreported) section 4 governed the

grounds upon which a divorce petition may be presented. The husband could only present a petition for divorce on one ground which was adultery. The wife could only present a divorce petition on the ground of adultery coupled with another ground such as cruelty, desertion, bigamy, rape, and others. The different treatment of the spouses to a marriage in divorce proceedings was challenged in the Constitutional Court as being unconstitutional and the Constitutional Court held that the different treatment of spouses was unconstitutional on account of discrimination. It ordered that both spouses would henceforth be entitled to the same grounds for divorce set out in section 4 of the Divorce Act.

[13] In light of Uganda Association of Women Lawyers and 5 Others v Attorney General, Constitutional Petition No. 2 of 2002 it is sufficient for either spouse to allege one ground for divorce as set out in section 4 of the Divorce Act for a petition or cross petition to succeed.

[14] Section 8 of the Divorce Act provides the circumstances in which a petition may be successful or not. It states,

> **'8. When petition shall be granted.**
> (1) If the court is satisfied that the petitioner's case has been proved, and does not find that the petitioner has been accessory to or has connived at the going through of the form of marriage or the adultery, or has connived at or condoned it, or that the petition is presented or prosecuted in collusion, the court shall pronounce a decree nisi for the dissolution of the marriage.
>
> (2) Notwithstanding subsection (1), the court shall not be bound to pronounce the decree if it finds that the petitioner has during the marriage been guilty of adultery, or been guilty of unreasonable delay in presenting or prosecuting the petition, or of cruelty to the respondent, or of having deserted or wilfully separated himself or herself from the respondent before the adultery complained of, and without

reasonable excuse, or of such wilful neglect of or misconduct towards the respondent .....

[15] Before a grant of a decree nisi, the Court must first be satisfied that the petitioner's grounds as presented have been proved. Secondly, that there was no connivance or condonation or collusion with the respondent in presenting the petitioner. And lastly that the petitioner is not guilty of adultery, or unreasonable delay in presenting the petition or cruelty to the respondent, or desertion or separation or other misconduct.

[16] These provisions of the law may be or appear to be archaic but they still represent the law on divorce, and no court administering the law as it is, can ignore them and instead step up its own requirements such as irreconcilable differences as a ground for divorce. Irreconcilable difference is a ground for divorce in many jurisdictions but until the Divorce Act is amended or a new law promulgated that sets up irreconcilable difference as a ground for divorce, it is not the law of this jurisdiction, however attractive it might be.

[17] In the case at hand, the appellant would succeed if she proved adultery committed by the respondent. The respondent had denied committing adultery much as the co respondent in the court below had admitted on her pleadings of committing adultery with the respondent. As against the respondent, this issue of whether or not the respondent had committed adultery, was therefore up for trial with the appellant being obliged to present evidence to prove so, on a balance of probability. If the appellant was successful on the ground for divorce, or the respondent was successful on the cross petition for divorce, the court would have to try the issues of custody and matrimonial property before arriving at a decision on those issues or any other issues that were to arise in the dissolution of this marriage.

[18] I have perused the record of appeal. All proceedings save those of 13 September 2017 were dealing with interlocutory applications. It is the proceedings of 13 September 2017 which appear to relate to the hearing of the

main petition for divorce, or at least, in which decisions relating to the main petition were made. We shall set the same out below.

> '**Court:** Mr. Rukundo why are we here?
> **Counsel Rukundo:** My lord we are here for two things and the 1st thing is to have a decree nisi signed for all the parties and the 2nd reason is for determinations to be made on the issues within the petition basically on the custody of the children and the question of property.
> **Court:** Mr. Nsengiyunva is that the only reason we are here?
> **Counsel Nsengiyunva:** My lord I though this matter was for mention.
> **Court:** What about the issue of the decree nisi?
> **Counsel Nsengiyunva:** My lord we had made a proposal to sign the decree nisi but of course now circumstances have changed.
> **Court:** What has changed?
> **Counsel Nsengiyunva:** My lord a decree nisi is entered when the grounds for dissolution of a marriage have been proved. My lord the petitioner brought this case alleging adultery.
> **Court:** Is there a marriage to protect anymore here?
> **Counsel Nsengiyunva:** There isn't, I would not think.
> **Court:** Why don't we dissolve this marriage first? Mr. Mwasa you still want the marriage? So why don't we agree that the decree nisi be signed today then we go in to other issues of custody and matrimonial property.
> **Counsel Nsengiyunva:** My lord with your guidance, we can sign it but the circumstances leading to it.
> **Court:** You have moved from that far, you had several meetings with the previous judge on the 14th December 2016 you had a meeting and you agreed that the marriage be dissolved those circumstances were there and you are aware of them. Have they just come up now? When do you want to talk about the decree nisi Mr. Nsengiyuna?
> **Counsel Nsengiyunva:** It can be entered.
> **Court:** Let the decree nisi be entered and then determination of issues of custody and matrimonial property remain?
> **Counsel Nsengiyunva:** Yes.
> **Court:** To be decided by Court?

Counsel Nsengiyunva: Yes.
Court: This is my ruling, let all counsel appearing before me today prepare a decree nisi and present that decree before me for signature by 2.30pm today. Mr. Rukundo how do we proceed on the issue of custody and the matrimonial property?
Counsel Rukundo: My lord on the issue of Custody it is our submission that the children…
Court: Can you file written submission?
Counsel Rukundo: We can file written submissions.
Respondent: [Takes Oath]
Court: What are your names?
Respondent: Charles Steven Mwasa.
Court: How old are you? Respondent: I am 39 years.
Court: Where do you stay?
Respondent: I stay in Kiwatule Kazinga Zone.
Court: Which district is this?
Respondent: Kampala.
Court: Do you know Rebecca Nagidde?
Respondent: I know Rebecca Nagidde.
Court: How do you know her?
Respondent: We go married and got two kids.
Court: What are their names?
Respondent: Christian Wamai Mwasa.
Court: How old is Christian Wamai Mwasa?
Respondent: 11 years old.
Court: Where does he stay?
Respondent: During holidays he stays with me and during school days Monday to Friday he is at school.
Court: Which school?
Respondent: Seeta Junior School but Saturday and Sunday I stay with him.
Court: And the 2nd child is called?
Respondent: Timothy Mwasa.
Court: How old is he?
Respondent: He is 7 years old.
Court: Where does Timothy stay?
Respondent: I stay with him but he goes to Kampala Parents School.
Court: Who pays the school fees?

Respondent: I pay their school fees and I look after them.
Court: Mr Rukundo address me on the properties?
Counsel Rukundo: My lord our submission on the properties because the properties are divided in to three categories.
Counsel Mabonga: Is that category solely owned by the Petitioner Rebecca?
Court: When was it acquired?
Counsel Mabonga: The titles show.
Court: Then the second category?
Counsel Mabonga: The 2nd Category solely owned by the respondent and then the 3rd category is jointly owned however there are also other properties that were transferred.
Court: the registered owners of those properties are they parties?
Counsel Mabonga: My lord they are not. My lord we had prayed this court to call them as witnesses. My lord there is the other category of property that is owned by a company in which the petitioner and the respondent are shareholders.
Court: The company is now party to these proceedings?
Counsel Mabonga: My lord shareholders are part of these proceedings.
Court: Are there other share holders apart from them?
Counsel Mabonga: Yes.
Counsel Rukundo: My lord if I could suggest that all the properties that are solely owned but are not developed should stay.
Court: That is the matter you will put in your written submissions and we look at them. Let counsel for the petitioner file his written submissions on the issues of custody of the children and the distribution of matrimonial property upon the dissolution of this marriage by the 27th day of September 2017 and counsel for the respondent should file his reply by 11th October 2017. A rejoinder if any should be filed by 18th October 2017. I will deliver my judgment on this matter on the 15th day of November 2017 at 11.00am. Is there anything else we were supposed to discuss or we have finished the case. (sic)? I am only waiting for the decree nisi today.
Counsel Rukundo: No my lord.

Justice David Matovu
13/09/2017'

[19] It is clear from the foregoing that the learned trial judge reached the decision to grant a decree nisi without holding a hearing and receiving evidence from the appellant who was the petitioner and from the respondent. There was no evidence before the trial judge to conclude that the petitioner had proved the grounds set forth for dissolution of her marriage. Indeed the decree nisi does not cite any ground upon which the marriage was dissolved. There was no trial conducted in respect of that matter or any other matter as the parties were directed to file written submissions without adducing any evidence with regard to the issue of custody of children or division of matrimonial property.

[20] I now turn to consider the grounds of appeal advanced by the appellant. I shall start with grounds 8 and 9, which if they succeed, would dispose of the appeal. The main contention in these grounds is that there was no trial in the court below. From the record of proceedings of 13th September 2019, upon the court deciding to enter a decree nisi, the learned trial judge examined the respondent in relation to the children. The respondent was not examined in chief or cross examined. In any case the appellant had not presented her case as she was entitled to begin. The trial judge also asked counsel some questions relating to the properties owned by the parties. Thereafter the learned trial judge directed the parties to file written submissions on the issues of custody of children and distribution of matrimonial property upon dissolution of the marriage and closed the case. The appellant, rightly in my view, is critical of this mode of procedure adopted by the trial judge on the ground that she was denied the right to be heard.

[21] Article 28 (1) of the Constitution provides:

'28. Right to a fair hearing.

(1) In the determination of civil rights and obligations or any criminal charge, a person shall be entitled to a fair, speedy and public hearing before an independent and impartial court or tribunal established by law.'

[22] Both the Constitution and or the rules of natural justice under the common law, require that courts of law or any other bodies charged with the duty of adjudicating upon disputes between parties should act fairly, in good faith and without bias to give each party the opportunity to adequately state their case, correct or contradict any relevant testimony prejudicial to their case. The right to be heard includes the right to appear and present one's case, that is, give oral testimony during the trial and the right to cross examine adversarial witnesses in order to determine the veracity and reliability of their evidence whether it be in a criminal or civil matter.

[23] Order 18 of the Civil Procedure Rules lays down the procedure for conducting and hearing of civil cases. It provides:

ORDER XVIII—HEARING OF THE SUIT AND EXAMINATION OF WITNESSES.

1. Right to begin.

The plaintiff shall have the right to begin unless the defendant admits the facts alleged by the plaintiff and contends that either in point of law or on some additional facts alleged by the defendant the plaintiff is not entitled to any part of the relief which he or she seeks, in which case the defendant shall have the right to begin.

2. Statement and production of evidence.

(1) On the day fixed for the hearing of the suit, or on any other day to which the hearing is adjourned, the party having the right to begin shall state his or her case and produce his or her evidence in support of the issues which he or she is bound to prove.

(2) The other party shall then state his or her case and produce his or her evidence, if any, and may then address the court generally on the whole case.

(3) The party beginning may then reply generally on the whole case; except that in cases in which evidence is tendered by the party beginning only he or she shall have no right to reply.

3. Evidence where several issues.

Where there are several issues, the burden of proving some of which lies on the other party, the party beginning may, at his or her option, either produce his or her evidence on those issues or reserve it by way of answer to the evidence produced by the other party; and, in the latter case, the party beginning may produce evidence on those issues after the other party has produced all his or her evidence, and the other party may then reply specially on the evidence so produced by the party beginning; but the party beginning will then be entitled to reply generally on the whole case.

4. Witnesses to be examined in open court.

The evidence of the witnesses in attendance shall be taken orally in open court in the presence of and under the personal direction and superintendence of the judge.

5. How evidence to be recorded.

The evidence of each witness shall be taken down in writing by or in the presence and under the personal direction and superintendence of the judge, not ordinarily in the form of question and answer but in that of a narrative, and when completed shall be signed by the judge.

6. Records made in shorthand or by mechanical means.

Notwithstanding rule 5 of this Order, the evidence given or any other proceeding at the hearing of any suit may be recorded in shorthand or by mechanical means, and, if the parties to the suit agree, the transcript of anything so recorded shall, if certified by the judge to be correct, be deemed to be a record of the evidence or other proceeding for all the purposes of the suit.

7. Summary of evidence in certain cases.

Notwithstanding rule 5 of this Order, in all cases before any court in which the subject matter in dispute or amount claimed can be valued in money and that value does not exceed three hundred shillings, it shall be sufficient for the judge to make in writing a brief summary of the evidence given before him or her.

8. Any particular question and answer may be taken down.

The court may, of its own motion or on the application of any party or his or her advocate, take down any particular question and answer, or any objection to any question, if there appears to be any special reason for so doing.

9. Questions objected to and allowed by court.

Where any question put to a witness is objected to by a party or his or her advocate, and the court allows the question to be put, the judge shall take down the question, the answer, the objection and the name of the person making it.

10. Remarks on demeanour of witness.

The court may record such remarks as it thinks material respecting the demeanour of any witness while under examination.

11. Power to deal with evidence taken before another judge.

(1) Where a judge is prevented by death, transfer or other cause from concluding the trial of a suit, his or her successor may deal with any evidence taken down under rules 1 to 10 of this Order as if the evidence had been taken down by him or her or under his or her direction under those rules, and may proceed with the suit from the stage at which his or her predecessor left it.

(2) The provisions of sub rule (1) of this rule shall, so far as they are applicable, be deemed to apply to evidence taken in a suit transferred under section 18 of the Act.

12. Power to examine witness immediately.

(1) Where a witness is about to leave the jurisdiction of the court, or other sufficient cause is shown to the satisfaction of the court why his or her evidence should be taken immediately, the court may, upon the application of any party or of the witness, at any time after the institution of the suit, take the evidence of the witness in the manner hereinbefore provided.

(2) Where the evidence is not taken immediately and in the presence of the parties, such notice as the court thinks sufficient of the day fixed for the examination shall be given to the parties.

(3) The evidence so taken shall be read over to the witness and, if he or she admits it to be correct, shall be signed by him or her, and the judge shall, if necessary, correct the evidence, and shall sign it, and it may then be read at any hearing of the suit.

13. Court may recall and examine witness.

The court may at any stage of the suit recall any witness who has been examined, and may, subject to the law of evidence for

the time being in force, put such questions to him or her as the court thinks fit.

14. Power of court to inspect.

The court may at any stage of a suit inspect any property or thing concerning which any question may arise.

[24] Upon consideration of the foregoing provisions, it is evident that the trial court failed to conduct a full and proper trial. Courts are supposed to pronounce judgement only after the case has been heard, based on the evidence adduced in the case and the applicable law, unless the parties have agreed to the facts that resolve the issues between them by consent. See Kashongole Godfrey v Kafeero Francis [2017] UGCA 130. The procedure adopted by the trial court in this instant case is alien to that provided by Order XVIII of the Civil Procedure Rules. No trial was conducted prior to entering the decree nisi which was allegedly granted on the basis of consent by the parties. No evidence was adduced in court and no witnesses were called to give evidence relating to any of the issues that was resolved by trial court. There was no admission by the respondent of relevant facts upon which the ground put forth for divorce could have been said to have been proved. The appellant was not given an opportunity to give her evidence in court and there is no evidence that she waived her right. The learned trial judge put some questions to the respondent upon being sworn but he was neither examined in chief nor cross examined. Parties are entitled to state their case in court through an oral trial which was not afforded in this case. There was simply no trial. The resultant judgment was null and void. See Bishop Balagadde Ssekadde & 5 others v Moses Wamala Court Appeal Civil Appeal No. 27 of 2011 (unreported).

[25] In light of the above it is unnecessary to consider the remaining grounds of appeal.

[26] For the foregoing reasons, I would allow this appeal with costs in this court. I would set aside the decree nisi and the judgment of the trial court and order a re-trial. Costs in the court below should abide the outcome of the re-trial.

Decision

[27] As Musota, JA and Kasule, Ag. JA agree this appeal is allowed with costs here. The decree nisi and judgment of the trial court are set aside. A re-trial is ordered. Costs below shall abide the outcome of the re-trial.

Signed, dated and delivered at Kampala this 23 day of Jan 2020

Fredrick Egonda-Ntende
Justice of Appeal

THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA HOLDEN AT KAMPALA

Coram: [EGONDA- NTENDE & MUSOTA, JJA AND KASULE, Ag, JA]

CIVIL APPEAL NO. 160 OF 2018

(Arising from High Court divorce Cause No. 70 of 2016)

BETWEEN

REBECCA NAGIDDE..... APPELLANT

AND

CHARLES STEVEN MWASA..... RESPONDENT

(An appeal from the Judgment of the High Court of Uganda. (Family Division), Matovu, J, delivered on the 20th February, 2018)

JUDGMENT OF REMMY KASULE, Ag, JA

I have had the benefit of reading through the lead judgment of my brother Justice Egonda- Ntende, JA and I agree with the same and the order for a retrial.

I also agree with the proposed orders as to costs.

Signed, dated and delivered at Kampala this....23...day of ...Jan...2020.

.....

REMMY KASULE

Ag, Justice of Appeal

THE REPUBLIC OF UGANDA

IN THE CONSTITUTIONAL COURT OF UGANDA AT KAMPALA

CIVIL APPEAL NO. 160 OF 2015

(Arising from High Court Divorce Cause No. 160 of 2018)

REBECCA NAGIDDE :::::::::::::::::::::::::::::: APPELLANT

VERSUS

CHARLES STEVEN MWASA :::::::::::::::::::::::: RESPONDENT

CORAM: HON. JUSTICE EGONDA NTENDE, JA

HON. JUSTICE STEPHEN MUSOTA, JA

HON. JUSTICE REMMY KASULE, Ag. JA

JUDGMENT OF JUSTICE STEPHEN MUSOTA, JA

I have had the benefit of reading in draft the judgment by my brother Justice Fredrick Egonda- Ntende, JA.

I agree with his judgment and the orders he has proposed. The appeal is allowed, the decree nisi and the judgment are set aside. A retrial is ordered.

Costs of this appeal will go to the appellant while costs of the court below shall abide the outcome of the retrial.

Dated this 23 day of Jan 2020

Stephen Musota
JUSTICE OF APPEAL