THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT MBARARA

HCT-05-CV-CA-0028-2005

(Arising From MBR-00-CV-DC-20-2001)

MOSES TURYARAMYA …….APPELLANT

VS

DAISY KOBUSINGYE TURYARAMYA…… RESPONDENT

BEFORE: THE HON. MR. JUSTICE P. K. MUGAMBA

JUDGMENT

The three grounds of appeal read as follows:

1) The learned Trial Magistrate erred in law and occasioned a miscarriage of justice when he failed to appreciate that a petition duly verified was evidence in court.

2) The learned Trial Magistrate's Ruling not to strike out/dismiss paragraphs 14, 15 and 20, relating to adultery, on grounds of verified condonation violated the clear provisions of sections 7 and 9 of the Divorce Act and occasioned a total failure of justice.

3) The order in the ruling to amend, on courts own motion, amounted to a directive to change clear verified evidence to manipulate justice and occasioned a failure of justice.

Counsel for the appellant stated in his submission regarding the first ground of appeal that a petition in divorce is a piece of evidence before court. For effect he cited S. 31(1) of the Divorce Act. The said provision states:

'Every petition shall state, as distinctly as the nature of the case permits, the facts on which the claim is based, and shall be verified as if it were a plaint, and may at the hearing be referred to as evidence.'

Respectfully I do not see anything within the proceedings and in the submissions of counsel tending to support the allegations in the first ground of appeal. For this reason the ground shall fail.

Concerning the second ground of appeal, it emerges a babel in communication regarding words used in the petition exists. Even in court one lawyer said the words meant one thing while the other said they meant something else. Evidence was yet to be heard and the determination of the matter in the view of the trial magistrate would be the outcome of a full hearing. That is when sections 7 and 9 of the Divorce Act would be applied to the evidence on record. For now I see no reason to fault the decision of the learned trial magistrate. This ground also is not sustainable.

As for the third ground, I find the trial magistrate suggested amendment in order that both parties would be clear about what was contained in the petition. He noted:

‘---Since court is desirous of granting remedies sought, in the interest of justice the petitioner is granted leave to amend the petition to reflect what is actually intended to be pleaded ---.‘

In *Steward vs North Metropolitan Tramways Co* (1886) 16 Q BD 556 at page 558 Lord Esher stated that the rule of conduct of the court in such a case is that however negligent or careless may have been the first omission and however late the proposed amendment, the amendment should be allowed if it can be made without injustice to the other side. There is no injustice if the other side can be compensated by costs but if the amendment will put them in such a position that they must be injured, it ought not to be made.

As I do not find the trial magistrate to blame on this score I reject this ground also.

Finally reference has been made to there being a miscarriage of justice. This is apparent in all the grounds advanced. Miscarriage of justice is said to occur where there has been misdirection by the trial court on matters of fact relating to the evidence given or where there has been unfairness in the conduct of the trial. See Halsbury’s Laws of England, 3 Edition, Volume 10 at pages 538 — 539 paragraph 988. From the proceedings I elicit no miscarriage of justice.

I dismiss this appeal with costs and order that hearing in the trial court should resume without delay.

P. K. Mugamba

Judge

2nd February 2006