



*d. Consequential order relating to the matrimonial property*

*e. Costs of the petition*

The Petitioner raised two grounds for the petition namely adultery, cruelty and desertion.

The hearing of the petition proceeded ex-part after Court satisfied its self that the Respondent had been served with the petition and she did not file an answer to the petition-***Order 9 rule 10 CPR***

The Petitioner's case rested on the evidence of four witnesses, the Petitioner, his Best man at the wedding, Israel Sekanjako (PW2), Moses Kabanda (PW3) and his Personal Assistant Charles Kasule (PW4).

It was the Petitioner's testimony that he got married to the Respondent Hadija Nasejje on the 27<sup>th</sup> day of October 1991 at Victory Christian Center Church, Ndeeba. They had previously cohabited for some time.

During their cohabitation and after the wedding they produced five children named earlier in this Judgment.

The Petitioner testified that around 2006 the couple experienced problems in their marriage when the Respondent got involved in an adulterous affair with one Mukwasi Hussein and others. The Respondent is alleged to have confessed the act in church. In proof of this, the Petitioner tendered in evidence an Agreement for Separation signed by the Respondent on 29<sup>th</sup> September 2006 wherein under paragraph 11 she admitted adultery with diverse men including one Hussein Mukwasi. The agreement was admitted in evidence as EXP 1.

One Moses Kasanda (PW3) testified to the effect that he is a member of the Petitioner's church-Christian Focus Center Mengo Kisenyi-where the Respondent was also a preacher.

He further stated that he was a witness to the agreement signed by the Respondent (EXP 1) wherein she admitted adultery. He concluded his testimony by confirming that since the making of the agreement above, the Respondent has not returned to the home of the Petitioner.

The Petitioner also called Isreal Sekanjanko (PW2) who testified that he was the Best Man at the Petitioner and Respondent's wedding. He tendered in the wedding photograph (EXP2). He further testified that the Respondent though a Moslem initially, had converted to Christianity and was a well known preacher and used to baptize people.

One Kasule Charles was called as PW4 and testified that he was the Petitioner's Personal Assistant. He testified that while still in school he used to spend the holidays at the couple's home, knew the children of the couple very well and has since two years back been resident at the home of the Petitioner. He confirmed that the Respondent has not been at the home since 2006.

At the hearing of the petition, one issue was identified for determination namely:- whether the Petitioner is entitled to the reliefs sought in the petition.

In a nutshell these are:- Dissolution of the marriage between the parties and grant of custody of the minor child to the Petitioner.

Adultery has been defined as consensual sexual intercourse during the existence of a marriage between a married person and a person of the opposite sex not being the

husband or wife of that married person. Adultery may be proved by either direct or circumstantial evidence. As observed by *Justice Ntabgoba* in ***George Nyakairu Vs Rose Nyakairu [1979] HCB 261***

***“in allegations of adultery it is not necessary to prove direct act of adultery for the fact was almost always to be inferred from the circumstances as a necessary conclusion since it is indeed true that parties were ever surprised in the act of adultery”.***

Adultery must be proved to the satisfaction of the Court (see ***Habyarimana Vs Habyarimana (1980) HCB 139***) but the Court can conclude after considering the facts and circumstances pleaded before it that an adulterous sexual intercourse took place.

The Petitioner testified that he has not been living with the Respondent since September 2006. He stated that the reason for the separation was because the Respondent got into an affair with another man one Hussein Mukwasi which affair the Respondent admitted in the presence of others. (See EXP 1). This fact was collaborated by Moses Kabanda (PW3) who stated that he was present at the gathering when the Respondent apologized before people including elders and pastors. He further stated that he was a witness to the Agreement for Separation which the Respondent signed.

Based on the direct and circumstantial evidence before Court, i am satisfied that the Respondent did commit acts of adultery on diverse occasions with other men but more especially one Hussein Mukwasi.

I hold therefore that the Petitioner has discharged the burden of proving that the Respondent did engage in the acts of adultery with diverse men including one Hussein Mukwasi.

The Petitioner sought custody for Kiganda Joshua Yatulwanira, the only remaining minor child from the marriage. The paramount principle in cases of custody is the welfare of the child. The child has been in the custody of the Petitioner since 2006 when the couple separated. There is no compelling reason why this arrangement should be interfered with by Court. Accordingly the Petitioner will retain the custody of the child.

The Petitioner seeks no costs, so be it.

In conclusion Court makes the following orders:-

1. A Decree nisi is hereby issued for the dissolution of the marriage between the Petitioner and the Respondent
2. The Petitioner is granted custody of the child Kiganda Joshua Yatulwanira
3. There is no order as to costs.

**B. Kainamura**

**Judge**

**2.08.2012**