

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA; AT FORT PORTAL
CIVIL APPEAL No. 0010 OF 2005

(Appeal from the judgment and decree of His Worship Karemani J. Karemera Magistrate Grade 1, in FPT Divorce Cause No. 0003 of 2000, dated the 17th of February, 2005)

FRANCIS XAVIER JAWEE ::::::::::::::::::::::::::::::::::::::::::::::::::::::: APPELLANT

VERSUS

CLEOPHAS KABAJWARA JAAWE::::::::::::::::::::::::::::::::::::::::::::: RESPONDENT

BEFORE: - THE HON. MR. JUSTICE ALFONSE CHIGAMOY OWINY –

DOLLO

JUDGMENT

The Respondent herein had petitioned Court to have her marriage to the Appellant herein either dissolved or a judicial separation ordered, on grounds of adultery cruelty, and desertion. The learned trial Magistrate found for the Petitioner and allowed the petition; and granted a decree nisi in the divorce cause. It is against this decision that the Appellant as the aggrieved party has appealed; seeking this Court's order that the order granted by the Court be set aside. The grounds of appeal are that:–

1. The trial Magistrate erred in law and in fact when he held that the evidence adduced revealed adultery.
2. The trial Magistrate erred in law in granting divorce on alleged adultery, if it had been proved, such adultery had been condoned and the petition had been brought after unreasonable delay.
3. The trial Magistrate erred in law and in fact in holding that there was evidence of desertion or cruelty as to lead to divorce.

At the hearing of the petition, the Petitioner gave a litany of events to prove adultery, cruelty, and desertion by the Respondent (now Appellant). The Appellant who had attended Court during the examination in chief of the Petitioner, and had through his lawyer cross examined her, however defaulted in appearance when it was his time to testify; upon which the Court proceeded to deliver judgment in default. The learned trial Magistrate found for the Petitioner that adultery had been proved and proceeded to grant a decree nisi.

Ordinarily, all the grounds of the petition would have failed on the sole ground of the Petitioner's having condoned such acts. She continued to have sexual relationship with the husband even after she had effectively found him red handed in bed with another woman. She persevered for the entire period of her marriage with the husband's torturous deeds which are brought out in evidence and were never controverted. I think, the learned trial Magistrate hastened to issue a decree nisi when the Petitioner had expressly prayed alternatively for an order of judicial separation. In the event I set aside the order of the trial Magistrate and substitute therefore an order of judicial separation. Being a family matter there will be no order as to costs here and in the Court below.

Alfonse Chigamoy Owiny – Dollo

JUDGE

20 – 06 – 2012