

Respondent's/Cross petitioner's grounds for dissolution of the marriage

- [3] That since the solemnization of their marriage, the petitioner has committed the following acts:
- a) **Adultery:** That the petitioner has on several occasions been involved in adultery from which he produced two children to wit; **Job Bukyanagandi** and **Joeline Aturinda**.
 - b) **Cruelty:** That the petitioner has over time been disrespecting the Respondent/cross petitioner and her children in society by consistently abusing her before children and church leaders.
- [4] Both parties contend that their marriage has irretrievably broken down and none of them has colluded or connived with the other or with any other person connected in any way with their proceedings.

Counsel legal representation

- [5] The petitioner was represented by **Mr. Mugabi Jim Kelvin** of **Ms. Muhaji & Co. Advocates, Hoima** while the Respondent was represented by **Mr. Kasangaki Simon** of **Ms. Kasangaki & Co. Advocates, Masindi** & **Mr. Marvin Asiimwe** of **Ms. A. Marvin & Co. Advocates, Hoima**. Written submissions were filed as permitted by this court for consideration during the determination of this cause.

Brief facts of the petition

- [6] The petitioner and the Respondent who profess the Christian religion contracted a church marriage on the 28/4/1990 at St. Peter's Cathedral Hoima under the Marriage Act.
- [7] Upon solemnization of the marriage, couple had their matrimonial home at Kiryatete West, West Division, Hoima and had the following issues;
- 1. **Talemwa Justice**, Male aged 30 years.
 - 2. **Tusabe Jeremiah**, Male aged 28 years.
 - 3. **Tumwesige Josephus**, Male aged 26 years.
 - 4. **Nuwagaba Kugonza Joel**, Male aged 22 years.

- [8] During the subsistence of the marriage, the Respondent/cross petitioner allege that the petitioner turned adulterous producing two children to wit; **Bukyanagandi Job Isaac** aged 30 years and **Joeline Aturinda** aged 15 years with a one **Sarah Monica Atuhura**. The petitioner denied the allegations and contended that the said son, **Isaac Job Bukyanagandi** was born before their marriage with the said **Sarah Monica Atuhura** and never had any further relationship as alleged by the Respondent.
- [9] The petitioner on the other hand alleged that the Respondent without the consent of the petitioner, secretly carried out tubal ligation and started committing acts of adultery with various men, that the Respondent ganged up with the children and assaulted him and therefore no body accords him respect in the home.
- [10] As part and process of their marriage breaking down due therefore, to nagging, disobedience, cruelty, violence//assault by the Respondent and children, the petitioner fled his matrimonial home for safety to his ancestral home at Kihungura Cell, West Division Hoima where he stays with his elderly mother. The Respondent on her part contend that the petitioner left the matrimonial home for his 2nd matrimonial home at Kihungura Cell and to Buguju, Mukono district where he is cohabiting with his mistress **Monica Sarah Atuhura**, the mother of **Bukyanagandi Job Isaac** and **Joeline Aturinda**.
- [11] In their Joint Scheduling memorandum, counsel formulated the following issues for determination of this cause.
1. Whether there exist grounds for dissolution of the marriage.
 2. What properties constitute family/matrimonial property for equal sharing by the parties.
 3. What properties constitute personal/individual property not divisible by the parties.
 4. What remedies are available to the parties.

Burden and Standard of proof

- [12] Like in any civil case, the burden of proof is on the petitioner to prove his or her grounds for dissolution of the marriage, **See S.101(1) & (2) of the Evidence Act;**

“(1) Whoever 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 those facts exist.

(2) When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person."

- [13] **Ss.6,7 and 8 of the Divorce Act** provide that court must satisfy itself so far as it reasonable as in its scope of inquiry, when to dismiss the petition or to grant the petition; See also **Edward Kakuuka Vs Aliet Yudesi Kyoyanga (1972) 11 ULR 66**. In **Blyth Vs Blyth (1996) 1 All ER 524, AC 643**, it was unanimously held by the H.O.L that the words "satisfied" do not mean satisfied beyond reasonable doubt and in **Habyarimana Vs Habyarimana [1980] HCB 139** and **Ruhara Vs Ruhara [1977] HCB 86**, settled the standard of proof of the grounds of divorce to be above the ordinary preponderance of evidence in ordinary Civil Suits but not as high as beyond reasonable doubt, See also **Gower Vs Gower [1950] 1 All ER 804**.

Issue No.1: Whether there exist grounds for dissolution of the marriage.

- [14] It is not in dispute that the petitioner and the Respondent contracted a church marriage under the marriage Act on the 28/4/1990 at St. Peter's Cathedral Hoima which is still subsisting. **S.4 of the Divorce Act** spells out the grounds for dissolution of marriage. In **Uganda Association of Women Lawyers & 8 Ors Vs A.G, Constitutional Petition No.2 of 2003**, it was held that each of the grounds of Divorce as specified in **S.4 of the Divorce Act** i.e, **Adultery** as a ground for a husband, **change of profession of Christianity for the profession of some other religion, and gone through a form of marriage with another woman, incestuous adultery, bigamy with adultery, marriage with another woman with adultery, rape, sodomy or bestiality; adultery coupled with desertion, without reasonable excuse for two years or upwards**, as grounds for a wife are available equally to both husband and the wife.
- [15] In the instant case, the petitioner pleaded **Desertion** and **Cruelty**. The petitioner led the following evidence to prove his claims;
- a) That the Petitioner got married to the Respondent in church vide the provisions of the marriage Act at St. Peter's Cathedral, Hoima on the 28/4/1990 (Marriage Certificate in **P.Exh.1**) and during the

subsistence of the marriage, the Respondent deserted the petitioner and locked the matrimonial bedroom since 2013 with no reasonable cause or excuse. The Respondent refused to have sex with the petitioner and all steps by the relatives and the church leaders to settle the parties' differences failed.

- b) That due to nagging, disobedience, cruelty, attempts to poison the petitioner, domestic violence, assault by the children with the Respondent, the petitioner ran for safety to his ancestral home at **Kihungura cell**, Western Ward, Western Division, Hoima City where he stays with his elderly mother.
- c) That owing to the cruelty, acts of witch craft and desertion on the side of the Respondent, there has been irretrievable breakdown of marriage between the petitioner and the Respondent and pray that their marriage be dissolved.

[16] On the other hand, the Respondent testified that the parties developed misunderstandings and the petitioner left their matrimonial home and went to their 2nd matrimonial home at **Kihungura Cell**. That the misunderstandings began when the Respondent discovered that the petitioner had an illicit relationship with her best friend **Monica Sarah** with whom he produced two children.

[17] However, nowhere in her evidence in chief or during cross examination of the petitioner, did the Respondent attempt to challenge the allegations raised by the petitioner regarding locking the petitioner out of the matrimonial bedroom for any cause or excuse, nagging, disobedience, attempts to poison the petitioner, domestic violence, assault by children, denial of sexual intercourse and acts of witch craft. The Respondent's counsel cross examination of the petitioner only focused on property and had nothing to do with the allegations of desertion and cruelty raised by the Petitioner. In **Habre International Co.Ltd Vs Ebrahim Alekaria Kassam & Ors, SCCA No.4/1999**, the Supreme Court held inter alia that;

“Whenever the opponent has declined to avail himself of the opportunity to put his essential and material case in cross examination, it must follow that he believed that his testimony given could not be disputed at all.”

In **R Vs Melnick, 2005 AB PC 220 (Can LII)**, Court observed that where a central feature of the complainant's evidence is left untouched in cross examination or even implicitly accepted in that cross

examination, the absence of cross examination negatively impacts on the defendant/Respondent's credibility. See also observations of Justice Tsekooko JSC in **Prince J.D.C Mpuga Vs Prince Solomon Iguru & Ors S.C.C.A NO.18/1994** that

“Although DW9 was not asked to specifically identify Exh. D.4... He was not cross examined on this piece of vital evidence which was believed by the trial Judge...Therefore, his unchallenged evidence was correctly relied on by the trial Judge as it carries considerable weight.”

- [18] **Cruelty** has been defined to mean ‘readiness’ to give pain or cause suffering of others, **Sarah Kiyemba Vs Robert Batte H.C Divorce Cause No.127/2018**. In **Russel Vs Russel (1897) AC 395** defined cruelty as **willful and unjustified conduct of such character as to cause danger to life, limb or health (body or mental) or as to give rise to a reasonable apprehension of such damage**, See also **Mayambala Vs Mayambala, H.C Divorce Cause No. 3 /1998**.
- [19] In this case, the petitioner leaving the matrimonial home to go and stay with his mother, he would be guilty of desertion. He however gave out excuses to account for his action and he was not challenged at all in this aspect. The Respondent locked him out of his matrimonial bedroom, no body respects him, the children and the Respondent gang up and assault him, in my view the Respondent is guilty of cruelty.
- [20] As observed in **Evans Vs Evans [1965] 2 All ER at p.788**, in cruelty, it is not necessary to show an intention to injure or inflict misery. Nor is it necessary to show a guilty mind. One essential element is injury or apprehended injury to health and the conduct is grave and weighty. Persistent refusal of sexual intercourse is cruelty when it extends over a long period and causes grave injury to the health of the other. One must of course, make excuses that may account for it, such as ill-health or time of life, or age or even psychological infinity. These excuses may so mitigate the conduct that the other party ought to put up with.
- [21] In the instant case, nowhere did the Respondent attempt to justify her denial of sex to the Respondent, apart from her allegations of infidelity which I shall refer to later in the judgment. This is a couple that had had their marriage and produced 4 issues, the eldest at the time of filing these proceedings being at the age of 30 years.

- [22] I conclude by finding that the Respondent's conduct of ganging up with the children to assault the petitioner, denial of companionship and a right to conjugal rights which are both embedded in the marriage contract, without reason, locking out the petitioner from his matrimonial bedroom and lack of respect and disobedience of the petitioner in the home cause physical suffering and mental torture and therefore amount to cruelty.
- [23] The conduct of the Respondent locking the petitioner out of the matrimonial bedroom since 2013 is conduct whose underlying intention is to bring the matrimony to an end; **Lang Vs Lang (1954) 3 All ER 571**. This kind of conduct amounts to desertion.
- [24] In the premises, I find that the petitioner has proved **desertion** and **cruelty** as grounds of dissolution of the marriage to the satisfaction of court.

The Respondent/Cross petitioner's grounds of divorce

- [25] The Respondent/cross petitioner pleaded **Adultery**, alleging that during the subsistence of their marriage, the petitioner was on several occasion involved in acts of adultery with a one **Sarah Monica Atuhura** with whom he has produced with 2 children to wit **Job Bukyanagandi** and **Joeline Aturinda**. **2ndly**, she pleaded **cruelty**, alleging that during the subsistence of their marriage, the petitioner committed various acts of cruelty to wit; the petitioner disrespecting her and her children in society by consistently abusing her before her children and church leaders, the petitioner forcefully converting her hard earned money, petitioner refusing his relatives including the petitioner's mother to visit her, petitioner concocting malicious cases at police against her and the petitioner withdrawing from her and moving to their other matrimonial home (at Kihungura cell) and lastly, the petitioner denying her conjugal rights.
- [26] It is not correct as counsel for the Respondent/Cross petitioner put in his submissions that the Cross petitioner is seeking for judicial separation. Her pleadings are clear she is seeking for divorce.

[27] In evidence however, the Respondent/cross petitioner only led evidence of unfaithfulness on the part of the petitioner who begot 2 children outside their marriage, namely **Job Bukyanaganda** aged 30 years and **Joeline Aturinda** aged 15 years. She never in evidence alluded to any other of her allegations. Since the Respondent/cross petitioner did not lead any evidence regarding her other allegations of being abused by the petitioner before her children and the church leaders, forceful conversion of her so called hard earned money, refusal of the petitioner's relatives to visit her, concocted malicious cases against her, denial of sex, apart from the petitioner's fleeing the matrimonial home which the petitioner has accounted for to the satisfaction of court as being the ruthless conduct of the Respondent/cross petitioner, I find that the Respondent/cross petitioner has not proved her allegations of cruelty to the satisfaction of court.

[28] As regards **adultery**, as was observed by UDO UDOMA in **Mangule Vs Visan Divorce Cause No.2/1962**,

“Adultery is of course essentially an act that can rarely be proved from direct evidence. It is a matter of inference from opportunity and circumstances. It is easy to suggest conditions that can leave no doubt that adultery has been committed, but the mere fact of people being together is not in itself sufficient to warrant the conclusion of the adultery.”

[29] In the instant case, apart from the Respondent stating in her testimony that the husband produced out of wedlock the 2 children, she did not present proof to support her allegations yet the law imposes on her a heavy onus to discharge in that respect; In **Veronica Habyarimana Vs Perfect Habyarimana** (supra), adultery was defined as,

“consensual sexual intercourse during the subsistence of the marriage between one spouse and a person of the opposite sex not their spouse. On the standard of proof of adultery, it is now well settled that when there is an allegation of adultery, it must be proved to the satisfaction of the court, while the evidence need not reach certainty, it must carry a high degree of probability.”

[30] In the instant case, the petitioner accounted for **Job Isaac Bukyanagandi**. That he produced the said **Job Bukyanagandi** with **Monica Sarah Atuhura** before the marriage with the Respondent and

has been faithful to his marriage to date. He denied **Joeline Aturinda** as being his issue out of wedlock. The Respondent was not able to adduce evidence to the contrary. It is evident from the testimony of **Job Bukyanagandi** (PW2) during cross examination that the petitioner takes over the welfare of many children including the said **Joeline Aturina**. That does not in my view render her the petitioner's daughter born out of wedlock. I find that the Respondent/cross petitioner failed to prove adultery on the part of the petitioner to the satisfaction of court.

[31] It is however apparent that despite the lack of evidence of grounds of divorce on the part of the Respondent/Cross petitioner, the couple had had extremely irreconcilable differences that have rendered their marriage incompatible. It is my view that a spouse should be allowed divorce even if he or she failed to prove the statutory grounds of divorce but for other factors, it is proved to the satisfaction of court that the marriage has irretrievably broken down.

Irretrievable/irreversible broken down marriage

[32] This is a broad ground of divorce that is predicated on the development of incompatibility between marriage partners; **Merian-Webster Legal Dictionary**. It is also referred to as irremediable break down of the marriage. It is a culmination of the grounds for dissolution of the marriage provided for in **S.4 of the Divorce Act** and other factors or scenarios that are not legislated but which surely display that marriage of the parties has reached an irremediable stage. Under our laws, marriage is a lasting commitment of a man and a woman to a lifelong partnership, established for the good of each other and the procreation of their children. This is supported very well with the help of legal and church doctrine ties, but by refusing to break those ties when their binding becomes unbearable, the law in such cases no more ensures the sanctity of the marriage, rather it becomes mere legal obligation for the parties. Divorce laws therefore protect the parties from such meaningless obligations by allowing them break their marital ties. It is pointless to keep two people bound by a marriage connection if they cannot live peacefully together.

[33] Divorce is not and should not therefore be seen as a mere tool of breaking the sacrament ties, rather it should be considered as a solution and majorly an escape route to move out of the unbearable situation

created due to high level tension and uncertainty in the wedlock making it impossible to stay in it.

[34] It is fairly evident in this case that nothing could be achieved by trying to keep the parties tied together to a marriage that in fact has ceased to exist between the parties themselves. In this case, we have a scenario where the couple are living apart and have not exercised their conjugal rights since 2013. There is lost love, care and lack of feelings by the wife for the husband. Their stay together manifested danger to their respective lives as evidenced by suspicion of witch craft by the husband and assaults on the husband, Petitioner by the Respondent and children. The husband has also resorted to use of police to tame the Respondent wife as evidenced by police summons to the Respondent **(P.Exh.16)** and Respondent's release on bond **(P.Exh.19)**.

[35] In return, the husband abandoned the matrimonial home for safety. There is therefore no longer love, trust and care of feelings for each other as a couple. These have the effect of severe emotional breakdown, thus collapse of the very basis of their marital relationship which cannot be rebuilt at all by any available way.

[36] It is clear in this case therefore, that parties have fallen apart from their marital relationship and their marriage remain irretrievably broken. During re-examination of the Respondent/Cross petitioner, she made the following comment;

"Where things have reached now, we can't rejoin again because things have gone very far. Let him have the divorce so that he can go...I don't object to the divorce."

Now, when the above statement by the Respondent/Cross petitioner is considered along the earlier Respondent's petition **vide Hoima Chief Magistrate's Court Divorce Cause No. 1 of 1996** (P.Exh.21) wherein the Respondent/cross petitioner unsuccessfully sought for divorce and **P.Exhs.23,25,26 & 27** which reflect unsuccessful efforts by police, the Bunyoro Kitara Diocese top religious officials who included the Bishop trying to attempt to wheedle the parties' differences to the shelf, I find that it is in the interest of parties that their marriage be accordingly dissolved and a decree of divorce be granted so that both parties can live apart but in peace.

Distribution and Division/sharing of property

- [37] Under **Sections 24 - 29 of the Divorce Act**, once court has found for an order of dissolution of marriage of parties, it has to make consequential orders with respect to alimony, custody and maintenance of the minor children and settlement of the couple's property.
- [38] In the instant case, neither party sought for an order for custody of the children of the marriage as none of them are of minor age. They are all above the age of 18 years. The Respondent did not seek any order of alimony. Since it is a well established rule that a party cannot be granted a relief which it has not claimed in the pleadings, See **Semalulu Vs Nakitto H.C.C.A No.04 [2017] UGH CLD 49**, there would be no basis for the court to make consequential orders with regard to either alimony or custody and or maintenance of the children. This court is only under duty to consider and make consequential orders as regards the distribution and division/sharing of the couple's property.
- [39] **Article 31 of the Constitution of the Republic of Uganda 1995** (as amended) provides that;
- “31. Rights of the family***
- (i) Men and women of the age of eighteen years and above, have the right to marry and to found a family and are entitled to equal rights in marriage, during and at dissolution.”***
(emphasis)

While interpreting the above Constitutional provision, Justice Kisaakye, JSC in **Julius Rwabinumi Vs Hope Bahimbisomwe Rwabinumi, SCCA No.10 [2013] UGSC 5** stated thus:

“So, while I agree that Article 31(1) (b) of the Uganda Constitution (1995) guarantees equality in treatment of either the wife or the husband at divorce, it does not, in my opinion, require that all property either individually or jointly acquired before or during the subsistence of a marriage should in all cases, be shared equally upon divorce.”

She went further and observed thus,

“In my view, the Constitution of Uganda (1995), while recognizing the right to equality of men and women in marriage and at its

dissolution, also reserved the Constitutional right to individuals, be they married or not, to own property either individually or in association with others...who may include a spouse, children, siblings or even business partners.”

[40] Being guided by the above principles and prepositions of the law, in the instant case, this court shall have a distinction between properties to be divided and shared by the parties and properties that constitute personal/individual property that are not divisible or sharable by the parties.

Issue No.2: What properties constitute family/matrimonial property to be shared by the parties.

[41] Family or matrimonial property has been defined to constitute that matrimonial property that a married couple choose to call home and such other property that a married couple or either of them contributes to, directly or indirectly and may or may not be registered in their joint names; See **John Muwanga Vs Myllious Kintu, HC Divorce Appeal No. 135/1997 [2001] UGHC 46.**

[42] In **Charman Vs Charman [2007] EWCA Civil 503**, Matrimonial property was defined as,

“Property of the parties generated during the marriage otherwise than by external donation.”

In **Kagga Vs Kagga HC Divorce Cause No. 11/2005**, Mwangusya J (as he then was) observed thus;

“Our courts have established a principle which recognizes each spouse’s contribution to acquisition of property and this contribution may be direct where the contribution is monetary or indirect where a spouse offers domestic services.”

In **Muthembwa Vs Muthembwa [2002] 1 EA 186**, it was held that:

1.The issue of whether the wife made a contribution to the acquisition of the suit properties was a question of fact.

2.Where it was impracticable to take accounts for purposes of determining the respective contribution of the parties to the management of aa home, there arose a rebuttable presumption of an equal contribution.

[43] Counsel for the petitioner submitted that in the course of the couple's marriage they acquired properties together which included **land at Kiryatete** registered in the name of the wife-developed with a residential and 2 rental apartments, a **piece of land at Isaka**, Kijungu, Hoima East Division, Hoima City, developed with a residential house and 11 rental apartments and **2 plots of land at Kyarwabuyamba** in Bujumbura, Hoima West Division, Hoima City registered in the names of the couple and their son, **Talemwa Justice**. That these properties marked as **P.Exhs.7,8,9 & 10** are all family properties which were acquired by the parties during the subsistence of the marriage and therefore, should be distributed equally considering the sentimental attachment of parties to the properties in question.

[44] Counsel for the Respondent/cross petitioner on the other hand submitted that all the properties in question including the Bank Accounts in Centenary Bank and Finca Uganda belong to the Respondent/ Cross petitioner as evidenced by documentation on record save those co-owned which should be valued and the petitioner's minority interest be paid out to him.

[45] I have carefully looked at and examined the various properties of the couple as evidenced by documentation on record. These are my findings:

1. Land at Isaka Kijungu, Hoima (P.Exh.7/R.Exh.2) with its plan (R.Exh.16)

It is registered land comprised in FRV 625, Folio 11, plot 374, Bugahya Block 17 at Isaka Lower. It is registered in the names of the parties and their son **Talemwa Justice**.

2. Land at Kiryatete, Hoima (P.Exh.8/R.Exh.5)

It is registered land comprised in LRV 3947, Folio 12, Plot 380, Bugahya Block 15, Hoima. It is registered in the names of the Respondent/cross petitioner.

3. 2 plots of land at Kyirwabuyamba, North Ward. Hoima (P.Exhs. 9 & 10/R.Exh.7 & 8).

It is registered land comprised in FRV 828, Folio 1, plot 90 & Folio 20, plot 91, Bugahya Block 16 respectively, Kyirwabuyamba. The 2 plots are registered in the names of the parties and their son, **Talemwa Justice**.

4. Motor Vehicle Reg. No.UAS 528 P (P.Exh.14)

It is registered in the names of the petitioner.

5. Motor Cycle Reg. No.UDF 095 G (P.Exh.15)

It is registered in the names of the petitioner.

6. A Joint Account No.8020100237 Centenary Rural Development Bank. Its documentation however was not provided by either party for record.

7. The Noble Family Mukama Talemwa Enterprises. This is comprised of the produce store.

[46] There are other properties to wit; **Motor vehicle Reg. No. UAS 287 P** and motor cycle **Reg. No.UDD 414 V Yamaha** which were referred to by the Respondent/Cross petitioner but she did not provide any documentation regarding them and there is therefore no evidence in support of their existence. As a result, this court shall not be able to either comment or make any order regarding their ownership.

[47] As described above and generally as per the evidence on record, all the properties as disclosed by the parties, they are family/matrimonial properties save for the **Motor Vehicle Reg. No. UAS 528 P** (P.Exh.14) and **Motor cycle Reg. No. UDF 095 G** (P.Exh.15). I shall however not consider dividing and or distributing the properties in percentages but shall consider equitable distribution and sharing save for funds and funds in Bank Accounts if any. Dividing and or distributing the properties in percentages may have certain underlying problems especially when it comes to implementation take for example, of orders like sale of a matrimonial home and give the proceeds with a certain percentage or sharing household properties halfway (50%) when the properties/items are of different values, or costs associated with valuation and instances where a party may not be in position to buy off his or her interest as may be ordered by ordered. In the instant case, the couple's properties are to equitably be distributed as follows;

1. Land at Kiryatete (P.Exh.8/R.Exh.5)

This land as per the evidence of both parties was their formerly matrimonial home until when irreconcilable differences occurred and the petitioner fled for his life. Indeed, though the property is registered in the sole names of the Respondent/Cross petitioner, she herself refers to it as the couple's matrimonial home. It is developed with a residential house, rental premises and a flat. It was acquired during the subsistence of the marriage and as of now, it accommodates the Respondent/Cross petitioner and four children of the couple aged 22,26,28 & 30 years respectively.

This matrimonial home now being a shelter/accommodation for the children under the care of their mother, the Respondent/cross petitioner, I found it desirable that it is be ordered to be given to the Respondent/Cross petitioner together with all the household items therein so as it becomes a home for the children and their mother. The petitioner forfeits his interest in it to them as the Respondent/Cross petitioner shall also forfeit her interest elsewhere for the petitioner.

2. Land at Isaka, Kijungu, Hoima (P.Exh.7/R.Exh.2)

The Respondent/Cross petitioner claim to had acquired it from her father **Mzee Nasani Kabaniha** (As per R.Exh.4) but its certificate of title clearly show that its interest was transferred to the family including, the couple's son **Talemwa Justice**. The developments thereon which include houses were made with an approved plan indicating the names "**Bukyanagandi and family**" (R.Exh.16). In the premises that the property's interest was transferred to the family as per the certificate of title (**P.Exh.7**) which bear the names of both couple and their first born son, **Talemwa Justice**, in the interests of justice, it is distributed to the petitioner so as he also secures shelter/accommodation which he shall refer to as home upon forfeiting his interest in the matrimonial home that has been given to the Respondent/Cross petitioner. The petitioner's holding of this property shall however be in trust of or subject to **Justice Taremwa's** interest. The Respondent/cross petitioner's interest in this property is forfeited in favour of the receipt of the matrimonial home.

3. 2 plots of land at Kirwabuyamba, (P.Exhs.9 & 10/R.Exhs. 7 & 8)

The 2 plots being registered in the names of the parties and their son, **Taremwa Justice**, the parties shall share the 2 plots equally. The petitioner shall take the 1st plot, i.e, **Plot 90, Bugahya Block 16** but in trust of and or subject to the interest of **Talemwa Justice** therein. The Respondent/Cross petitioner shall take the 2nd plot i.e, **Plot 91, Bugahya Block 16** but also in trust of or subject to the interest of **Talemwa Justice**, the couple's son therein.

4.Centenary Rural Development Bank Joint Account No.8020100237.

As I said before, neither party provided this Joint Account documentation so as for court to verify its actual composition. However, as its name refers, it is a joint bank account for which the parties are to share. The petitioner shall take 40% of the funds on the Account, while the Respondent/Cross petitioner shall take 60% together with the children and this distribution shall take effect immediately upon the date of delivery of this judgment. Thereafter, the account is

to close accordingly and each party to open his or her own individual account in any bank of his or her choice.

5. The Noble Family Mukama Talemwa Enterprises. This is comprised of the produce store. The available evidence on record is to the effect that the petitioner is a lecturer at Uganda Christian University (**P.Exh.8**) while the Respondent/Cross petitioner was a mere housewife who eventually got absorbed in the produce business established by the family. She has to have something to continue occupying her. In the premises, she is given **The Noble Family Mukama Enterprises, produce Store** for her operation. I do note and feel that some of the proceeds from the business were being banked on the **Centenary Bank Joint Account No.8020100237** out of which the petitioner has had a benefit by getting **40%** of the funds thereon since there is no evidence that the Respondent/cross petitioner held any other personal account.

Issue No.3: What properties constitute personal property for either party not divisible or sharable.

[48] As per the available evidence on record and conceded by the Respondent/cross petitioner, the following properties are exclusive of the petitioner and therefore are given to the petitioner.

1. **Motor vehicle Noah Reg. No. UAS 528 P** (P.Exh.14) in the names of the petitioner.
2. **Motor cycle Reg. No.095 G** (P.Exh.15) in the names of the Petitioner.
3. **Finca Uganda Bank A/C No.121100000421**
4. **Centenary Rural Development Bank A/C No.8020016086** (for the Petitioner's NSSF savings).

Issue No.4: Remedies to the parties

[49] The petitioner proved to the satisfaction of court **cruelty** and **desertion** as grounds for dissolution of the marriage. The Respondent/cross petitioner demonstrated to the satisfaction of court that her marriage with the Respondent has irretrievably broken down. As a result, I find it desirable and in the interests of justice that the parties' marriage be dissolved. In the premises, I accordingly dissolve the marriage of the parties with the following orders;

1. A **Decree Nisi** is hereby entered dissolving the marriage between the petitioner and the Respondent.

2. The petitioner is granted and or given the following properties;
 - a) **Land at Isaka, Kijungu Hoima comprised in FRV 625 Folio 11 plot 374, Bugahya Block 17 at Isaka lower** but to hold it in trust of and or subject to the interest of **Talemwa Justice** therein.
 - b) **One plot at Kirwabuyamba comprised in plot 90, Bugahya Block 16** but to hold it in trust of and / or subject to the interest of **Talemwa Justice** therein.
 - c) **40% of the funds in Centenary Rural Development Bank Joint Account No.8020100237.**
3. The Respondent/Cross petitioner is granted and or given the following properties:
 - a) **The matrimonial land at Kiryatete** comprised in LRV 3947 Folio12 plot 380, Bugahya Block 15, Hoima.
 - b) **One plot of land at Kirwabuyamba** comprised in plot No.91 Bugahya Block 16 but to hold it in trust of and or subject to the interest of **Talemwa Justice** therein.
 - c) **60% of the funds in Centenary Rural Development Bank Joint Account No.8020100237.**
4. **The funds on Joint Account No.8020100237**, the subject of the sharing by the parties, the distribution/sharing shall take effect immediately upon the date of the delivery of the judgment so that neither party is able to withdraw from the account money beyond the percentage of his/her share. Thereafter, the Account is to close accordingly.
5. This being a divorce matter where both parties are seeking dissolution of the marriage, no order is given as to costs.

Signed, dated and delivered at Masindi this 30th day of **November, 2022.**

Byaruhanga Jesse Ruggyema
JUDGE.