

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA
AT MBALE**

HCT-04-CV-CR-0019/2012

MICHEAL MUKHOLIAPPLICANT

VERSUS

WASWA JOSEPHRESPONDENT

BEFORE: THE HON. MR. JUSTICE STEPHEN MUSOTA

REVISION ORDER

This file is before me for a possible Revision order. The matter was forwarded through the Chief Magistrate Mbale by the Magistrate Grade one Bubulo. The background is contained in the forwarding letter by the magistrate Grade One Bubulo dated 19th October, 2012. I will quote here below the contents of the said letter:

“Reference is made to the above matters which are before me for execution of orders by the Grade Two Magistrate for refund of dowry.

It is my humble opinion that these judgments and orders are null following the decision of Her Lordship Justice Mukasa Kikonyogo DCJ as she then was in the Constitutional Petition No. 12 of 2007 MIFUMI (U) LTD& 12 OTHERS VS- THE ATTORNEY GENERAL AND KENNETH KAKURU, which she stated that:

“.....the customary practice of the husband demanding a refund of the bride price in the event of dissolution of the marriage demeans and undermines the dignity of a woman and is in violation of Article 33 (6) of the Constitution . Moreover, the demand of a refund violates a woman’s entitlement to equal rights with the man in marriage, during marriage, and at its dissolution (see Art. 31 (1).

Further, a refund demand fails to honour the wife's unique and valuable contributions to a marriage. A woman's contributions in a marriage cannot be equated to any sum of money or property, and any refund violates a woman's constitutional right to be an equal co-partner to the man."

Therefore, for this court to go ahead with the execution of these orders in my view would be sanctioning an illegality and as such I forward to you the above files for your further handling and guidance.

***Nakyazze Racheal
Magistrate Grade One***

The learned Chief Magistrate endorsed the views expressed by the Magistrate Grade One. I agree with the opinion of both the magistrate Grade One and Chief Magistrate that an order for a refund of dowry is unconstitutional in view of the decision in Constitutional Petition No 12 of 2007 ***Mifumi (U) Ltd & 12 others vs Attorney General and Kenneth Kakuru***. In that petition it was held inter alia that;

"The customary practice of the husband demanding a refund of the bride price in the event of dissolution of the marriage demeans and undermines the dignity of a woman and is a violation of Article 33 (6) of the Constitution moreover, the demand of a refund violates a woman's entitlement to equal rights with the man in marriage and at its dissolution See Art 31 (1).

Further, a refund demand fails to honour the wife's unique and valuable contributions to a marriage. A woman's contribution in a marriage cannot be equated to any sum of money or property, and any

refund violates a woman's constitutional right to be an equal co-partner to the man."

The learned trial magistrate was absolutely right to decline sanctioning execution for a refund of dowry in the head suit of 2 heads of cattle and 2 goats plus costs of 100,000/=. To do so would be tantamount to sanctioning an illegality.

The decision of the Magistrate Grade II Bubulo will be quashed and set aside since the original claim lacked a cause of action.

I so order.

Stephen Musota

Judge

10.1.2013.