

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
FAMILY DIVISION
DIVORCE CAUSE NO. 63 OF 2013

SLOWEY SHAUNA SUTTON.....PETITIONER

VERSUS

NIGEL SUTTON.....RESPONDENT

BEFORE HON. LADY JUSTICE PERCY NIGHT TUHAISE

RULING

When this matter was called for hearing learned counsel Damali Tibigwisa for the petitioner/cross respondent informed court that the petitioner/cross respondent was no longer domiciled in Uganda, that it was expensive for her to come for the trial, and that she was asking court to withdraw the petition against the respondent/cross petitioner. Learned counsel Peters Musoke for the respondent/cross petitioner did not object to the petitioner's withdrawal of the petition against the respondent, but he prayed court to award costs to the respondent/cross petitioner. He also informed court that there was a cross petition which should be allowed in favour of the respondent/cross petitioner if the petitioner was not able to return to Uganda. The petitioner/cross respondent's counsel

responded that domicile is important in such proceedings, that the cross petition is an injustice, that the main issue is custody of the children which the petitioner/cross respondent can pursue in Ireland.

After listening to both counsel's submissions on the matter, I granted leave to the petitioner/cross respondent to withdraw the petition against the respondent/cross petitioner, since the latter's counsel had not objected to the withdrawal. However, I deferred the question of whether the petitioner/cross respondent should pay costs to the respondent/cross petitioner, together with the question on the fate of the cross petition. I will proceed to consider the two questions.

On the question of costs, section 27 of the Civil Procedure Act provides that they are at the discretion of court. Order 25(1) of the Civil Procedure Rules also provides that a plaintiff may anytime before delivery of defence, or after receipt of the defence, before taking any other proceedings in the suit, by notice in writing, wholly discontinue his or her suit against the defendant, and thereupon he/she shall pay the defendant's costs.

I have perused the entire court record. I note from the record that that the respondent did file a defence (reply to petition) which includes a cross petition, plus signing a joint scheduling memorandum and attending court proceedings with his

counsel. It is only fair that though the matter is being withdrawn by the petitioner/cross respondent, the respondent/cross petitioner should be entitled to costs. The respondent/cross petitioner must have incurred expenses in defending the petition in terms of engaging a lawyer, filing his defence, attending court, and other connected matters. I am not persuaded by the petitioner/cross respondent's counsel's submissions that the petitioner/cross respondent does not have the means to pay costs, considering that she is still retaining the services of counsel even though she left the country. In that regard, the petition is to be withdrawn with costs to the respondent.

On the cross petition, the petitioner/cross respondent's counsel submitted that the cross petition is an injustice and that domicile is relevant in such proceedings. The respondent/cross petitioner's counsel on the other hand maintains that this court should allow the cross petition if the petitioner is unable to come back to Uganda.

Section 1 of the Divorce Act states that decrees for dissolution of marriage shall only be made if the petitioner is domiciled in Uganda at the time the petition is presented. The requirement under the said provisions is apparently that the petitioner should be domiciled in Uganda at the time of the petition. In the instant case, on the face of the pleadings, the

respondent/cross petitioner was living and working in Uganda at the time he filed the cross petition against the petitioner/cross respondent. There is nothing in the pleadings to show he questions his current domicile. Thus the cross respondent's eventual change of domicile is of no effect to the cross petition against her.

In my opinion, the cross petition still stands against the cross respondent even if she has left the country, and the cross petitioner has not withdrawn it. That notwithstanding however I decline the cross petitioner's request to allow the petition on grounds that the cross respondent is not able to return to Uganda. The prayer will be addresses at the hearing of the cross petition.

Percy Night Tuhaise

Judge

11/11/2014.