

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**FAMILY DIVISION**

**DIVORCE CAUSE NO. 14 OF 2017**

**NAMUYIMBWA PROSCOVIA.....PETITIONER**

**VERSUS**

**DAVID RALPH PACE.....RESPONDENT**

**BEFORE HON LADY JUSTICE PERCY NIGHT TUHAISE**

**JUDGMENT**

This is a petition for divorce filed by the petitioner against the respondent for a decree that the marriage between her and the respondent be dissolved; for costs of the petition and any other remedy the court deems fit.

The background is that the petitioner lawfully married the respondent in a civil marriage at the office of the Chief Administrative Officer (CAO) in Masaka Uganda. They after that briefly resided in Uganda but later relocated to China where they settled for three years. In 2016 they agreed that they should relocate to Uganda. They also agreed that the petitioner was to travel to Uganda first and later be joined by the respondent. The petitioner travelled back to Uganda as agreed, but the respondent backtracked on his word and decided to go back to his home country in the United States of America (USA). The petitioner then filed a petition for divorce against the respondent.

The respondent did not file any reply within the required time though he was at all material times served with the petition and summons to answer petition and all subsequent hearing dates. This was done through his known e mail address. The relevant affidavits of service sworn by the process servers are on the court record. The respondent acknowledged receipt through his e mail stating, among others, that he did not intend to contest the divorce petition and that the outcome should be sent to him. When the matter came up for hearing, the petitioner, through her counsel, prayed to proceed *ex parte*. The prayer was granted by court. The petitioner filed sworn witness statements in line with the time schedules set by this court.

The petitioner's evidence as deduced from her petition and sworn witness statement is that she married the respondent in a civil marriage at the office of the Chief Administrative Officer (CAO) in Masaka in Uganda. After the marriage, the two briefly resided at Katwe Butego Division in Masaka District. They later travelled to China where they resided for three years. In 2016 they agreed to relocate to Uganda. The petitioner was to travel to Uganda first after which

she would be joined by the respondent. The petitioner travelled back to Uganda in pursuance of the arrangement. To her surprise, when she called the respondent, he told her that he had changed his mind and was relocating to his home country in the USA. That since then the respondent has neglected his matrimonial duties and failed to provide for the family for over three years, that when she contacted the respondent, he was abusive and cruel. That the respondent stated to the respondent that he was no longer interested in the marriage, that the petitioner was not a suitable partner for him, and that he was no longer ready to continue with the relationship. The petitioner further stated that the respondent admitted having committed adultery with a one Shekinah Wright with whom they are cohabiting in Boston USA.

The petitioner states on oath that the respondent has abandoned and deserted her and has deprived her conjugal rights categorically telling her he no longer loves her; that he has on numerous occasions been abusive to her and made her life unbearable; that her marriage with the petitioner has irretrievably broken down and their differences are irreconcilable; that there are no issues to the marriage; and that no collusion or connivance exists between the parties.

Learned Counsel Odokel Opolot for the petitioner, in his written submissions, contended that there was a valid marriage between the petitioner and the respondent, that the grounds of adultery, desertion and cruelty had been established by the petitioner against the respondent, and that the marriage should be dissolved on those grounds. He cited **Alai V Uganda [1967] EA 596; Habyarimana V Habyarimana [1980] HCB 139; Perry V Perry (1952) 1 ALL ER 1075; Habre International Co Ltd V Ebrahim Alakaria Kassam & Others SCCA 4/1999; and Eridadi Ahimbisibwe V World Food Programme & Others iv KALR 32** to support his submissions. The case was resolved along the following legal issues:-

1. Whether there was a valid marriage between the petitioner and the respondent.
2. Whether there are any grounds for divorce.
3. Whether the petitioner is entitled to any other remedies.

***Issue 1: Whether there was a valid marriage between the petitioner and the respondent.***

The petitioner attached to her sworn witness statement a copy of her marriage certificate with the respondent (Annexure A) to support her case that she was legally married to the respondent in a civil marriage at the office of the Chief Administrative Officer (CAO) in Masaka Uganda. This has not been disputed or challenged by the respondent. A civil marriage conducted under the Marriage Act cap 251 is one of the forms of marriages that are recognized in Uganda. Thus, this court finds that there was a valid marriage between the petitioner and the respondent.

Issue 1 is resolved in the affirmative.

***Issue 2: Whether there are any grounds for divorce.***

Section 4 of the Divorce Act which set out separate grounds for divorce for men and women was declared unconstitutional by the Constitutional Court in ***Uganda Association of Women Lawyers (FIDA) & 5 Others V Attorney General Constitutional Petition No 2/2003***. This was on basis of Article 31(1)(b) of the Constitution which provides that a man and a woman are entitled to equal rights in marriage, during marriage and at its dissolution. This restates the constitutional prohibition of discrimination on the basis of sex enshrined in Articles 21 and 33 of the same Constitution. The legislature (Parliament) is yet to fill the lacuna created by the Constitutional Court's decision.

The position of the law now is that each of the grounds for divorce specified in the Divorce Act is available equally to both the husband and the wife. See ***Dr. Specioza Wandira Kazibwe V Engineer Charles Nsubuga Kazibwe Divorce Cause No. 03/2003***. In the *Kazibwe* case court held that both adultery and cruelty are distinctive grounds, each in its own right, upon any of which a *decree nisi* may issue. Courts may also look at the facts in totality to determine whether a marriage has irretrievably broken down. See ***Julius Chama V Specioza Rwalinda Mbabazi Divorce Cause No. 25/2011***, Kainamura J.

There is evidence adduced on oath by the petitioner that the respondent has neglected his matrimonial duties and failed to provide for the family for over three years. It is the petitioner's evidence that when she contacted the respondent, he was abusive and cruel; that the respondent stated to the petitioner that he was no longer interested in the marriage, that the petitioner was not a suitable partner for him, and that he was no longer ready to continue with the relationship. The petitioner further states on oath that the respondent admitted having committed adultery with a one Shekinah Wright with whom they are cohabiting in Boston USA; and that no collusion or connivance exists between the parties.

The petitioner also states on oath that the respondent has abandoned and deserted her, depriving her of conjugal rights. Desertion may be actual or constructive. In this case the adduced evidence is that the respondent's desertion was actual, in that he unreasonably refused to relocate to Uganda to continue cohabitation with the petitioner. According to the petitioner's uncontroverted evidence, the respondent categorically told her he no longer loves her. The petitioner's evidence is further that the respondent has on numerous occasions been abusive to her and made her life unbearable; that her marriage with the petitioner has irretrievably broken down and their differences are irreconcilable. There is evidence that the parties are no longer living together.

The foregoing evidence is not denied or rebutted by the respondent. The petitioner's case has been subsequently proved to the required standards by the petitioner. Besides, there are case decisions that a party who has not filed a defence is deemed to have admitted the allegations. See ***Eridadi Ahimbisibwe V World Food Programme & Ors [1998] IV KALR 32***, Lugayizi J.

Looking at the evidence in totality, the entire matrimonial relations between the parties, including their conduct and personality, the respondent's conduct amounts to cruelty. There is

also uncontroverted evidence that the respondent has abandoned and deserted the petitioner, depriving her of conjugal rights, and categorically telling her he no longer loves her. The desertion on the part of the respondent is unreasonable by virtue of his refusing to return to Uganda in accordance with the arrangement between them, consequently depriving the petitioner of her conjugal rights as the respondent's spouse.

The petitioner has adduced uncontroverted evidence that the respondent's conduct has caused mental and psychological torture to the petitioner. It amounts to cruelty and desertion. The desertion has lasted more than two years. There is also evidence that the marriage between the respondent and the petitioner has irretrievably broken down. The two parties are no longer living together neither are they planning on reconciling. The respondent has committed adultery with Shekinah Wright with whom they are cohabiting in Boston USA.

The petitioner has proved her claim against the respondent to the required standards on all the prayers. Accordingly, judgment is entered as prayed against the respondent for the following orders:-

- i) A decree *nisi* is granted for the dissolution of the marriage between the petitioner and the respondent.
- ii) Costs of the petition are awarded to the petitioner.

**Dated at Kampala this 20<sup>th</sup> day of March 2018.**

Percy Night Tuhaise

**Judge.**