

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(FAMILY DIVISION)
MISCELLANEOUS APPLICATION NO. 371 OF 2021
(ARISING OUT OF DIVORCE CAUSE NO. 001 OF 2017)

NAMAGEMBE WINNIFRED M. KAWAKA:.....APPLICANT

VERSUS

1. PADDY MATSAGA KAWAKA

2. IRIDAH NAKANJAKO :..... RESPONDENTS

BEFORE: HON. JUSTICE. Dr. FLAVIAN ZEIJA

RULING

This is an application to set aside brought under section 33 of the Judicature Act Cap 13, Section 98 of the Civil Procedure Act Cap 71, and Order 9 Rule 23 and Order 52 Rules 1 & 3 of the Civil Procedure Rules, S.I 171-1 for orders that;

- 1. The decree nisi dissolving the marriage between the Petitioner Namagembe Winnifred M. Kawaka and the 1st Respondent Paddy Matsaga Kawaka dated 3rd May, 2021 be set aside.*
- 2. The order directing the 1st Respondent to collect rent from property comprised in Busiro Block 337 Plot 996 land at Mugogo Ssabagabo Busiro Mengo District for the next two years dated 3rd May, 2021 be set aside.*



3. The order dismissing the Petitioner's case in Divorce Cause No. 001 of 2017 with costs issued on 3rd May, 2021 be set aside.
4. The order dated 3rd May 2021 directing the lawyers to file written submissions in respect to the cross – petition be set aside.
5. The Petitioner's case in Divorce Cause No. 001 of 2017 be reinstated and the Petitioner be allowed to present her case.
6. Divorce Cause No. 001 of 2017 be heard and determined on its merits.
7. Costs of the application be provided for.

The application was supported by the affidavit of the applicant in which the grounds of the grounds of the application were more buttressed. Briefly, the material grounds on which the application is anchored are that;

- a) The Applicant filed Divorce Cause No. 001 of 2017 seeking among others; orders to dissolve the marriage between the Applicant and the 1st Respondent, and for 50% of the matrimonial property acquired jointly with the 1st Respondent during the subsistence of the marriage.
- b) The 1st Respondent filed a reply and cross-petition to the petition. The Applicant replied and rejoined.
- c) Divorce Cause No.001 of 2017 was first allocated to Hon. Justice Namundi and upon his departure from Family Division, was taken over by Hon. Justice Lydia Mugambe. By this time, the Applicant's Lawyers had filed the Petitioner's trial bundle and Witness Statement.

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- d) By the time Hon. Lady Justice Lydia Mugambe took over Divorce Cause No. 001 of 2017, the matter had never been scheduled and /or fixed for hearing.
- e) When Divorce Cause No.001 of 2017 came up for mention for the first time before Hon. Justice Mugambe, the Applicant was unable to attend although her Lawyer was present in court.
- f) The 1st Respondent was also absent but was represented by his lawyer, Mr. Paul Ssebunya.
- g) That day on 12th April 2021, Counsel for the 1st Respondent addressed court on the matrimonial property (semi- detached rental houses) comprised in Busiro Block 337 Plot 996 land at Mugogo Ssabagabo Busiro Mengo at Kyengera, informed court that the Applicant had been collecting rent from the said property for 4 years and prayed that the 1st Respondent be allowed to collect rent from the said property.
- h) The Applicant's Lawyer objected to the 1st Respondent Lawyer's giving evidence from the bar but the Honorable Judge addressed Mr. Tendo the Applicant's Lawyer and asked him, "Why does your client want to take the Respondent's property? Why doesn't she work like other people instead of wanting things for free? I'm sure your client is younger than you and if you are working, what stops her from working?"
- i) The Hon. Lady Justice Lydia Mugambe then issued an order of decree nisi dissolving the marriage of the Applicant with the 1st Respondent, ordered that the 1st Respondent collect rent from the property comprised in Busiro Block 337 Plot 996 land at Mugogo Saabagabo Busiro, Mengo District for the next two years and adjourned the case to 3rd May, 2021.



- j) On 3rd May 2021 the Applicant could not attend the said court hearing as she was scheduled to undergo a major operation at Nakasero Hospital.
- k) During the hearing on 3rd May 2021, the Applicant's lawyer informed Court that the Applicant was unable to attend court because she was unwell, which excuse the Hon. Judge rejected and went ahead to dismiss the petition for want of prosecution and directed both Counsel to file written submissions in respect of the cross-petition.
- l) The Applicant's lawyer objected and informed the Hon. Judge, without success, that no evidence had been submitted since none of the witness statements had been tendered into court and no evidence had been adduced yet.
- m) The learned Hon. Judge thereafter signed an order effecting the orders that she had made on 12th April 2021.
- n) The Applicant, while still in hospital, received a call from one of her tenants at the rental units in Kyengera informing her that the 1st Respondent had issued him with an eviction notice.
- o) That on 8th May 2021, the 1st Respondent went to the rental units and removed the door and windows from the unit which the Applicant occupies.
- p) That on or about 26th May, 2021 the 1st Respondent, with the assistance of goons, went to the rental unit occupied by the Applicant, illegally removed all her possessions, dumped them at Kyengera police station and forcefully took over the said unit rendering her homeless.
- q) That the learned Judge erroneously and irregularly signed the decree nisi dissolving the marriage between the Applicant and



1st Respondent, erroneously and irregularly granted an order that the 1st Respondent collect rent from the property comprised in Busiro Block 337 Plot 996 land at Mugogo Ssabagabo, Busiro, Mengo District for the next two years, erroneously and irregularly directed the Applicant's Counsel to file submissions for the cross-petition and erroneously and irregularly dismissed the petition.

- r) That there is sufficient cause for the Applicant's non-appearance when the case came up for hearing on 3rd May 2021.*
- s) There was no inordinate and inexcusable delay in the prosecution of the matter on the Applicant's part.*
- t) The reinstatement of Divorce Cause No. 001 of 2017 against the Respondents, setting aside the orders of the learned Hon. Judge given on 3rd May 2021 will not in any way prejudice the parties but will enable the suit to be disposed of on its merits.*
- u) The Applicant is likely to suffer irreparable loss, injury and /or damage which cannot be adequately compensated for by way of damages if the above said orders are not set aside.*

Although the entire court record indicates that the 2nd respondent has never taken part in the proceedings right from the beginning, there is no proof whatsoever on court record indicating that the 2nd respondent was ever served with this application. Therefore, this application is a nonstarter in respect of the 2nd respondent since there is no proof that the same was served on her.

In reply to this application, the 1st Respondent deposed an affidavit in reply containing grounds in opposition to the application, briefly that;

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- a) The application lacks merit, the affidavit in support is incurably defective hence the application should be dismissed with costs.
- b) The 1st Respondent denies that he acquired the suit properties with the Applicant and contends that he solely acquired the suit properties way before he got married to the Applicant.
- c) That the parties filed witness statements in Divorce Cause No. 001 of 2017.
- d) That per the record of proceedings of 18th April 2018, the parties completed the scheduling of the Petition and Cross Petition which were then fixed for the 30th of May 2018 for hearing.
- e) That the Petition and Cross- Petition came up for hearing on 13th April, 2021 and not on the 12th of April, 2021.
- f) That the reason for the 1st Respondent's non-appearance in court when the matter first came up for mention is because he works and lives in the United Kingdom hence he was waiting for court to fix both the petition and cross petition for hearing so that he can travel to Uganda for purposes of giving evidence in court in respect to the Petition and Cross-Petition.
- g) That as per the record of proceedings of 13th April, 2021 both Counsel for the Petitioner and Respondent addressed court in respect to the status of the rental income being collected from one of the suit properties comprised in Busiro Block 337 Plot 996 land at Mugogo Kyengera Ssabagabo Busiro Mengo ("Kyengera property") and as evidenced from those proceedings, the 1st Respondent's lawyer never gave evidence from the bar and neither was there any objection



by the Applicant's Counsel that the 1st Defendant's Lawyer was giving evidence from the bar.

- h) That per the record of proceedings of 13th of April 2021, upon hearing the submissions of both Counsel, court exercised its inherent powers and in the interest of justice made an order that the 1st Respondent collects rent from the Kyengera property for 2 years to recover what the Applicant had received solely as rental income from the said property for the past four years after she had earlier denied him access to the same.
- i) That both the Applicant and 1st Respondent through their lawyers never opposed the dissolution of their marriage which prompted court to proceed and dissolve the same by issuing a decree nisi and thereafter the hearing of the Petition and Cross-Petition was adjourned in the presence of both Counsel to 3rd May, 2021 for hearing.
- j) That per the record of proceedings of 13th April, 2021 it is the Applicant's Lawyer who, despite protestations from the 1st Respondent's Lawyer, successfully applied to court to consider the evidence in chief on court record without putting the same to cross examination.
- k) The Applicant's absence from court on 3rd May, 2021 which is the date that the Petition and Cross- Petition was fixed for hearing was not supported by any medical evidence hence court was justified to dismiss the Petition with costs.
- l) That on 3rd May 2021 which was the date for the hearing, the 1st Respondent had travelled from the United Kingdom to adduce evidence in both the Petition and Cross- Petition and being the Respondent, he was supposed to adduce



evidence after the Petitioner / Cross Respondent and her witnesses had completed adducing theirs.

- m) That the Applicant deceitfully blurred annexure "D" of the affidavit in support of the application with the intention of hiding the fact that what she was referring to as a major operation is her giving birth to her second child with the 3rd Cross Respondent.
- n) The Applicant was admitted in Nakasero Hospital to give birth on 5th of May 2021 and not on the date of the hearing of 3rd May 2021 hence there is no explanation from the Applicant as to why she never attended court on 3rd May 2021.
- o) That at the time the 1st Respondent took possession of the Kyengera property, the Applicant was not living on /in the same as it was occupied by tenants.
- p) That at all material times, the Applicant has been living with the 3rd Cross- Respondent in the apartments in Kawempe together with their two children whom she conceived and gave birth to while she was still married to the 1st Respondent.
- q) That the 1st Respondent lawfully took possession of the Kyengera property hence the claims by the Applicant that he unlawfully evicted her from the same are unmerited.
- r) That the Hon. Trial Judge lawfully issued the decree nisi in both the Petition and Cross- Petition, justifiably issued the order granting the 1st Respondent possession of the Kyengera property and also justifiably dismissed the Petition for want of prosecution.
- s) Upon dismissing the Petition, the Applicant through her lawyers filed a Notice of Appeal and proceeded to apply to



court for a record of proceedings challenging the stated dismissal which appeal is yet to be prosecuted by the Applicant.

- t) It was on the basis of the application of the Applicant through her Counsel that the Trial Judge issued a directive for the parties to file Written Submissions and disregard cross examination of the witnesses on their Witness Statements.
- u) That the contents of paragraphs 24, 25, 26, 27 and 28 of the affidavit in support of the application are false hence unmerited and as such, the same should be dismissed with costs.
- v) That in the event that this Honorable Court is inclined to reinstate the Petition, the same should be reinstated with costs to the 1st Respondent.

In rejoinder, the Applicant reiterated the grounds contained in the affidavit in support of the application and further stated that;

- a) The filing of a Notice of Appeal and a letter requesting for proceedings does not in any way acquiesce to the irregularity of the proceedings before the Honorable Judge and neither does it remove her right to apply to this Honorable Court to set aside the said resultant irregular orders and have the petition reinstated.
- b) It was highly irregular for the trial judge to dismiss the petition (in which she had just issued a Decree Nisi) for want of prosecution since the dismissal would have nullified all previous proceedings.

Representation

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The Applicant was represented by Nexus Solicitors and Advocates while the 1st Respondent was represented by M/s. Paul Sebunya & Co. Advocates

Preliminary points of Law.

Counsel for the 1st Respondent submitted that the Applicant filed submissions in respect to the application on 4th June, 2021 and thereafter filed amended submissions on 12th August, 2021 without leave of court. As such, the Applicant's amended submissions be struck off the court record with costs to the 1st Respondent as they are a nullity. Contrariwise, Counsel for the Applicant submitted that the 1st Respondent's assertion that the Applicant's submissions were amended without leave of court is baseless. That the Applicant filed amended submissions on 12th August 2021 before the hearing of the application and court took cognizance of the existence of the said submissions during the hearing of this application on 14th October 2021. Court directed the Respondents to file their Written Submissions by 14th October 2021 but no directive was made as to the Applicant's Written Submissions meaning that they were adopted by court. Counsel for the Applicant further submitted that the Respondents have suffered no prejudice from the amended submissions which were served on them on 12th August 2021 and the Respondents had ample time to prepare a reply.

Without delving into unnecessary detail, I find that Counsel for the 1st Respondent has not demonstrated even an iota of what prejudice has been visited on his client by the Applicant's amended submissions. Counsel for the 1st Respondent filed written submissions in reply wherein he exercised his right to canvass all the issues raised in

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the Applicant's amended submissions. To ask this court to strike out the said amended submissions is therefore, an exercise in futility. Moreover, when parties appeared in court for directions, this court directed Counsel for the Respondents to file written submissions in reply by 14th October 2021, Counsel for the Applicant to file submissions in rejoinder by 21st October 2021. By implication, this court had taken due cognizance of the Applicant's amended Written submissions. Otherwise, what would the submissions in reply be intended to reply to? I take it that the directives given were to file written submissions in reply to the Applicant's amended submissions and that is exactly what was done. The preliminary point of law is therefore without basis.

Another preliminary point of law for this court's immediate determination can be found in the affidavit in reply deposed by the 1st Respondent. The 1st Respondent deposed that the contents of paragraphs 24, 25, 26, 27 and 28 of the affidavit in support of the application are false hence unmerited and as such, the same should be dismissed with costs. For ease of reference, I reproduce the said paragraphs hereunder;

24. "That I have been advised my Lawyers, Nexus Solicitors and Advocates, which advice I believe to be correct, that there is sufficient cause for my non-appearance when the case came up for hearing on 3rd May 2021 and have advised me to apply to this Honorable Court to set aside the order of dismissal of my petition and have my case reinstated"

25. "That I have further been advised by my Lawyers, Nexus Solicitors and Advocates, which advice I verily believe to be correct, apply to this Honorable Court to set aside the decree nisi dissolving the marriage between the 1st Respondent and myself, the order that the 1st Respondent collect rent from the property comprised in Busiro Block 337 Plot 996 land at Mugogo, Ssabagabo, Busiro Mengo District for the next two years, and



direction that Counsel file written submissions in respect to the Cross- Petition."

26. "That there is no inordinate and inexcusable delay in prosecution of the matter on my part"

27. "That I have been advised by my Lawyers, Nexus Solicitors and Advocates which advice I verily believe to be true that reinstatement of Divorce No. 001 of 2017 against the Respondents, setting aside the order of the Learned Hon. Judge given on 3rd May 2021 will not in any way prejudice the parties but will enable the suit to be disposed of on merits.

28. "That I swear this affidavit in support of the application to set aside the order dismissing my petition in Divorce Cause No.001 of 2017, reinstate Divorce Cause No. 001 of 2017 against the Respondents, set aside the decree nisi dissolving the marriage between the 1st Respondent and myself, set aside an order directing the 1st Respondent to collect rent from the property comprised in Busiro Block 337 Plot 966 land at Mugogo, Ssabagabo, Busiro, Mengo District for the next two years and set aside the directive to the Lawyers to file Written Submissions in respect of the Cross-Petition".

With due respect, the suggestion that the paragraphs highlighted above are false is baseless. Again, the 1st Respondent does not point to this court what aspects of the said paragraphs are false. Surely it cannot be that the information which is largely hinged on points of law or mixed law and fact which the Applicant deponed on the advice of her Advocate falls within the category of information that courts of law would find to be false. In any case, it is trite law that once court is satisfied as to the falsity of certain parts of the affidavit, the false parts can be severed and the rest of the substance examined

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on its merits. **See: *Besigye Kiiza v Museveni Yoweri Kaguta & Another (Supreme Court Election Petition No. 1 of 2001)***. Even if the said paragraphs had been defective in whole or in part, that would not in itself render the entire affidavit defective. The second preliminary objection is equally overruled. I will now proceed to determine the application on its merits.

Issues for determination of court

Both Counsel for the Applicant and the 1st Respondent made submissions in respect to the following issues;

- 1. Whether the order dated 3rd May 2021 issuing a decree nisi dissolving marriage between the Applicant and 1st Respondent is unlawful and should be set aside.***
- 2. Whether the order directing the 1st Respondent to collect rent from the property comprised in Busiro Block 337 Plot 996 Land at Mugogo Ssabagabo Busiro Mengo District for the next two years is unlawful.***
- 3. Whether the order directing the Lawyers to file written submissions in respect to the Cross-Petition issued on 3rd May 2021 is unlawful.***
- 4. Whether there was sufficient cause for the non-appearance of the Applicant at the hearing of 3rd May 2021 and consequently whether the order dismissing the Petitioner/ Applicant's case was lawful.***
- 5. What remedies are available to the Applicant, if any.***

Issue 1: *Whether the order dated 3rd May 2021 issuing a decree nisi dissolving marriage between the Applicant and 1st Respondent is unlawful and should be set aside.*

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Counsel for the Applicant submitted in line with paragraph 5 and 6 of the affidavit in support that of the application that by the time the trial judge took over Divorce Cause No. 001 of 2017, the Petitioner's trial bundle and the witness statements of the Applicant and 1st Respondent had been filed but the parties had not yet appeared in court to tender in the said statements and trial bundle. Furthermore, that the matter had never been conferenced. That when the matter came up for mention, the trial judge issued a decree nisi without a trial having been conducted and the orders were made in the absence of any evidence from the Applicant and /or Respondent. Contrariwise, Counsel for the 1st Respondent submitted that a decree nisi was issued based on the consent of Counsel for both parties that they were not opposed to the dissolution.

I have looked at the typed record of proceedings. Page 11 of the typed record of the proceedings of 14th March 2019 shows; Counsel for the Applicant informed court that the Joint Scheduling Memorandum and the Petitioner's witness statements and trial bundle had been filed although the Respondent had not yet filed witness statements. In light of this glaring admission, I wonder on what basis the Applicant is now turning around to contend that there was no Scheduling Conference when the Joint Scheduling Memorandum was admittedly filed according to her own Counsel per page 11 of the typed record of proceedings. Secondly, on page 14 of the typed record of proceedings, the learned trial judge asked both Counsel whether the parties were opposed to the dissolution of the marriage. Counsel for both parties responded that they were not opposed to the dissolution. The learned trial judge on page 15 ruled thus;

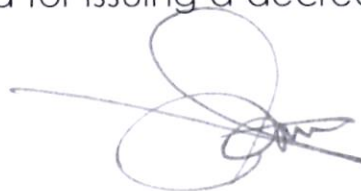
"It appears this marriage if at all it ever existed is unamendable and both parties are agreeable to its dissolution. For this reason, the marriage is dissolved, a decree dissolving the marriage between the petitioner and Respondent is issued. What remains

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to be determined is who owns or takes what share of the property that is the Kyengera rentals and Kitende property"

From the foregoing, it is undisputed that if there is any recourse that the Applicant /Petitioner wanted from court, it was the dissolution of marriage order. On the face of it, it therefore, contradicts common sense that the Applicant seeks to set aside an order that she prayed for in her petition. However, in my view the answer seems to lie in the Petitioner's amended petition and 1st Respondent's cross-petition in Divorce Petition No. 01 of 2017. In the cross petition, the 1st Respondent admittedly pleaded that by the time he got married to the Applicant on 9th May 2011 at the Kampala Registry of Marriages, he had earlier on 19th February 2004 contracted a customary marriage with a one Priscilla Fantivi and that their customary marriage was still subsisting. As such, he prayed for a decree of nullity declaring his subsequent marriage with the Applicant null and void. In the alternative, he prayed that the same be dissolved on grounds of adultery and cruelty. Similar facts had been pleaded by the Applicant/ Petitioner before she subsequently amended her petition and only retained prayers for dissolution of marriage.

It is my considered view that if this application is not granted, it will never be possible to determine with absolute certainty whether the marriage between the Applicant and Respondent was null and void as a result of a pre-existing customary marriage or whether the said marriage was valid and subsequently dissolved lawfully. The consequences of an annulled marriage significantly differ from the consequences of a dissolved marriage and uncertainty as to whether the marriage was a nullity or valid would serve no justice to the parties in relation to property distribution and it would certainly have adverse effects on their individual courses of life thereafter. This is a kind of uncertainty that could only be resolved by recourse to evidence. It should be noted that when marriage is declared to have been null and void, there is no need for issuing a decree nisi and absolute. It is

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presumed never to have existed at all. Consequently, the order dissolving the marriage between the Applicant and 1st Respondent without conducting a trial was done erroneously and is hereby set aside.

Issue 2: Whether the order directing the first Respondent to collect rent from the property comprised in Busiro Block 337 Plot 996 Land at Mugogo Ssabagabo Busiro Mengo District for the next two years is unlawful.

The gist of the Applicant's submissions on this issue is that the learned trial judge irregularly adopted a procedure which is alien to the Civil Procedure Rules and thereby made erroneous orders which according to the Applicant were prejudicial. As such, the Applicant prays that the impugned order of court be set aside such that Divorce Cause No. 001 of 2017 can be heard on merit.

Counsel for the Applicant submitted that when Divorce Cause No.001 of 2017 first came up for mention on 12th April, 2021 Counsel for the 1st Respondent gave evidence from the bar that the Applicant had been collecting rent for 4 years from Matrimonial Property (semi-detached rental houses) comprised in Busiro Block 337 Plot 996 land at Mugogo Ssabagabo Busiro Mengo at Kyengera and for that reason the 1st Respondent be allowed to collect rent from the said property. The learned judge then made an order that the 1st Respondent collects rent from property comprised in Busiro Block 337 Plot 996 land at Mugogo Ssabagabo Busiro Mengo District (semi-detached houses) for the next two years. Subsequently, the 1st Applicant acting on the orders issued by the learned trial Judge evicted the Applicant and her tenants from the property.

On the other hand, Counsel for the Respondent submitted that the decision of court was premised on the fact that the property comprised in Busiro Block 337 Plot 996 Land at Mugogo Ssabagabo Busiro Mengo district is owned jointly by the Applicant and 1st



Respondent as registered proprietors, a fact which the Applicant admitted under paragraph 4 (b) of the amended petition. That by admitting in her pleadings that the 1st Respondent was a co-owner of the stated property yet the Applicant is the only one deriving income from the same, court was within its powers to issue an order for the 1st Respondent to also solely derive income from the stated property for two years.

I have examined the record and found on page 14 of the typed record of proceedings, there is a clear indication that the trial judge relied on the statements of Counsel when she ruled that;

"Noted. Having heard from Counsel for the Petitioner and Cross Petitioner, it is not fair that the Petitioner has solely received proceeds from the rentals of the Kyengera property when it is in both their names. I therefore hereby direct on my inherent powers and in the interest of justice that proceeds from the Kyengera rentals be given to the Respondent" (Emphasis mine)

There was no evidence whether documentary or oral other than that of the 1st Respondent's Counsel given from the bar, to justify the conclusion that the Petitioner had solely been collecting rent from the rentals at Kyengera unfairly. The final extracted Order directed that the Respondent collects rent from the property comprised in Busiro Block 337 Plot 996 land at Mugogo Ssabagabo Busiro Mengo district for the next two years. I am at loss as to why the learned judge specifically ordered for the rent to be collected for a period of two years and not four years to match the allegation raised by Petitioner's Counsel that the Petitioner had been solely benefitting from the rent collection for four years. I am even more persuaded to set aside the trial court's Order for the reason that whereas the Petitioner had pleaded that she jointly owned the property with the Respondent, the latter had pleaded that he solely acquired the same property prior to his impugned marriage to the Petitioner. The rushed assumption that because property is registered in both names therefore both parties



jointly own it was erroneous in the absence of cogent evidence to court's satisfaction. The order directing the 1st Respondent to collect rent from the property comprised in Busiro Block 337 Plot 996 Land at Mugogo Ssabagabo Busiro Mengo District for the next two years was therefore made without legal basis and is set aside.

Issue 3: Whether the order directing the Lawyers to file written submissions in respect to the Cross-Petition issued on 3rd May 2021 is unlawful.

Issue 4: Whether there was sufficient cause for the non-appearance of the Applicant at the hearing of 3rd May 2021 and consequently whether the order dismissing the Petitioner/ Applicant's case was lawful.

Issue 5: What remedies are available to the Applicant, if any.

I will resolve issues 3, 4 and 5 together. Orders in respect to both issues were issued on 3rd May 2021 when Counsel for both parties and the 1st Respondent himself appeared in court but the Applicant was absent.

Counsel for the Applicant submitted that when the matter came up for hearing on 3rd May 2021, the Applicant was unable to attend court because she was unwell, a fact which her Lawyer brought to the attention of court. The learned judge dismissed the Applicant's case for want of prosecution and directed the Lawyers to file written submissions in respect of the cross petition. Counsel for the 1st Respondent submitted that Court was justified in dismissing the Petitioner's case for want of prosecution in the absence of documentary evidence that she was unwell.

Whether or not the Applicant was unwell can be deciphered from a clear copy of "annexure D" attached to the 1st Respondent's



affidavit in reply to the current application. The undisputed discharge summary form authored by Nakasero hospital shows the date of admission of the Applicant into the hospital as 5th May 2021 and the discharge date as 8th May 2021. This was an admission into the hospital for giving birth which happened by a vacuum assisted Caesarean operation. According to Counsel for the Respondent, the Applicant should have appeared in court on 3rd May 2021 since she had not yet been admitted by then. With due respect, I find Counsel for the Respondent's submission absurd. Medical Science will reveal that the few days before child birth are very critical for an expecting mother with the pain being unbearable in some instances. To assume that the Applicant was feeling well two days before her admission to Nakasero hospital is unthinkable. I therefore, find that there was sufficient cause for her non-appearance in court for hearing on 3rd May 2021. It is equally my finding that the subsequent order directing the Lawyers to file written submissions in respect to the Cross-Petition issued on 3rd May 2021 was consequential to the order of dismissal of the Petition and as such it must suffer the same fate and be set aside.

In the result, all the impugned orders are set aside. This application is granted in terms of all the orders sought. Divorce Cause No. 001 of 2017 shall be fixed for hearing and determined on its merits inter-parties. Costs shall be in the cause.

Dated this^{29th}.....day of November..... 2021

Flavian Zeija (PhD)

PRINCIPLE JUDGE

