

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**(FAMILY DIVISION)**  
**DIVORCE CAUSE NO. 037 OF 2019**

**RONALD**  
**TWESIGYE** :::  
**: PETITIONER**

**VERSUS**

**SUSAN**  
**TUSIIME** :::  
**:: RESPONDENT**

**BEFORE: HON. JUSTICE SUSAN OKALANY**

**JUDGMENT**

- [1] This petition is brought against the respondent for orders that:
- a) The marriage of the petitioner and the respondent be dissolved;
  - b) This court grants the parties joint custody of the children; and
  - c) Any other relief that the court may deem fit be granted.

**BACKGROUND**

[2] The petitioner got married to the respondent on 27<sup>th</sup> November 2010 at All Saints Cathedral in Kampala and during the subsistence of their marriage, the parties begot three issues aged seven (7), four (4) and two (2) years respectively. At the time of filing this petition in 2019, the marriage between the parties has irretrievably broken down due to the respondent's cruelty. The petitioner emphasized that there is no collusion and connivance between him and the respondent and he prayed that their marriage be dissolved.

[3] The respondent on the other hand denied ever being cruel to the petitioner and instead accused him of being adulterous and engaging

in multiple extra marital affairs, with a one Charlotte Byarugaba and a one Freda Luzinda. She claimed that the petitioner produced two children with the said Charlotte Byarugaba and therefore does not deserve to be granted joint custody of the children, since he would take them to live with the women he is now cohabiting with. She maintains that the petitioner does not have any justifiable reason to divorce her and the petition is therefore frivolous and misconceived. She avers that the petitioner is not entitled to the reliefs sought.

[4]The respondent filed a counter petition against the petitioner/counter respondent seeking for orders that:

- i. The counter respondent pays the maintenance costs of their family, including school fees, shelter, medical and feeding costs inter alia;
- ii. The counter petitioner maintains custody of their children, since the counter respondent chose to abandon the family in a rented apartment;
- iii. The land at Kitagobwa, Kisangati and the house developed thereon is the couple's matrimonial home;
- iv. The rest of the property acquired by the parties belong to the counter petitioner;
- v. The counter petitioner be awarded permanent alimony;
- vi. The counter respondent pays the costs of the counter claim; and
- vii. Any further or other reliefs as this honorable court may deem fit be granted.

[5]The counter petitioner alleged in her pleadings that the counter respondent abandoned her and their children at Master Woods apartments in Naalya, where she had to pay monthly rent of 1,500,000/=. At the time, the termly fees of their first and second children were 1,500,000/=:, and 1,200,000/=:, while the daily cost for daycare for the youngest child was 20,000/=:.

[6]The counter petitioner further alleged that she acquired various properties together with the respondent including:

- a) A condominium at Naalya Housing Estate, which has since been sold to Prof. James P.M. Ntozi by the counter respondent for his sole benefit;
- b) Land at Kakyiika - Andrews in Booma, Mbarara with rentals, which title of was registered in both names;
- c) Land at Kiiso in Luweero approximately 140 acres, which was brought in 2012, but only registered in the counter respondent's name; and
- d) Land at Gayaza.

[7]She stated that all these properties, save for the one that was sold off, are in the control of the counter respondent.

[8]In rejoinder, the petitioner accused the respondent of performing acts of witchcraft, which included making him drink her menstrual fluids and also criticized her for having poor personal hygiene. He assured this Honorable Court that he will relinquish the custody of their children and give the respondent sole custody, in order to avoid her manipulative and bullying tendencies. He declared that the respondent will not force him to stay married to her, since he is entitled to his right to freedom as guaranteed by the Constitution of the Republic of Uganda.

[9]He denied the counter petitioner's claims that he had abandoned their residence, explaining that he fled their home because of the petitioner's cruelty and before he left their home, he had paid the water bill and left an advance of 1,800,000/= for the counter petitioner's use and had also paid 1,500,000/= as rent for the month of January 2019. That the counter petitioner is collecting 800,000/= from their Mbarara rental property, which she does not account for, but instead uses to fund her extravagant lifestyle. The petitioner promised to adduce evidence to show that he foots the transportation costs of

their three children to and from school. He stressed that the parties are no longer in love, and their last two children were born as a result of very rare sexual interactions between them.

[10] The petitioner produced four additional children out of wedlock, namely: Junior Ronny Twesigye, Stephen Ahumuza, Natasha Asiiimwe and Ankunda Twesigye.

[11] He prayed that the counter claim be dismissed, since it is full of lies and slander and also asked the counter petitioner to provide proof of the contributions she had made for the claimed properties. He acquired the condominium in Nalya in 2008 before their marriage, through mortgage financing, and that in any case, he had sold off the said property, making it immaterial in this matter before the court. He also deposited 20,000,000/= into the cross petitioner's account after the sale of the said condominium, as repayment of a loan advanced to him by the cross petitioner's friend.

[12] The petitioner alleged that the counter petitioner is oblivious about an existing liability of 292,000,000/= on the Kitagobwa property that she is claiming. He agreed to pay school fees for their children and provide them with medical care, but refused to pay rent for the counter petitioner, because she is gainfully employed, as a medical doctor. He further asserted that he will not be responsible for the feeding of their children since the counter respondent collects rent amounting to 800,000/= from their Mbarara property monthly and that his share of the proceeds from their Mbarara rental property is his contribution for the feeding of their children, if they are to be in the counter petitioner's custody.

[13] He asserted that the counter petitioner should maintain full custody of their children, because he is fed up of interacting with her for their children's sake. He referred to her as selfish, and that her selfishness is evident from the fact that she asked this court to give her all of the properties acquired since they got married. He prayed

that the counter petition be dismissed with costs, and reiterated his earlier prayer that the marriage between the respondent and himself be dissolved, there being no possibility of any reconciliation between them.

[14] In rejoinder to the counter respondent's answer to the cross petition, the counter petitioner denied being involved in any form of cruelty towards the counter petitioner and flatly denied any involvement in the practice of witchcraft. She restated her accusation against the petitioner for abandoning their home, failing to pay rent and for neglecting to provide maintenance for their family since his desertion. She prayed that this court does not permit the respondent to escape his marital responsibilities on his claims that she nags and bullies him and explained that she rarely collects rental proceeds from their Mbarara property and that when she does, it is directed towards taking care of their children. The respondent averred that the said rental income does not amount to 800,000/= as alleged by the petitioner, but is actually 190,000/= monthly, from only two tenants, since the rest of the tenants left the property due to its dilapidated condition.

[15] She stated that although the condominium property in Nalya was acquired before their marriage, it was their first matrimonial home and that the 20,000,000/= deposited in her account by the counter respondent was a loan repayment made by him, for a sum of money that he had borrowed from her friend Esther. The house under construction at Kitagobwa was meant to be their matrimonial home, but the counter respondent has been reluctant to show her its actual location. She averred that she would also prove that the land in Nakasajja Gayaza is matrimonial property too. The counter petitioner reiterated her prayers in the counter petition.

[16] In their joint scheduling memorandum, the parties raised the following issues for determination:

1. Whether there are grounds for dissolution of the marriage between the petitioner and the respondent;
2. Whether the parties have matrimonial property and if so, what proportion is each party entitled to;
3. Whether the parties are entitled to be given joint custody of the children and if not, who should be given custody of the children;
4. Who should provide maintenance for the children; and
5. What remedies are available to the parties.

[17] The parties filed written statements which were admitted as their evidence in chief. The petitioner testified as PW1 and called two witnesses, namely: James Muzinga (PW2) and Moses Twinomujuni (PW3), while the respondent called Esther Kabaswaga as DW1 and Athan Muhwezi who testified as DW2 and testified as DW3.

### **THE PETITIONER'S CASE**

[18] The petitioner got married to the respondent at All Saints Cathedral in Kampala on 27<sup>th</sup> November 2010 and together, they produced three children, namely: Arianna Nyonyozi Twesigye, Siima Twesigye and Micah Mwine aged eight, five and three years respectively, at the time of his testimony in court. Their marital relationship became strained, with the respondent constantly throwing criticisms and insults at him, in addition to her nagging him. The respondent was unhygienic and incapable of doing household chores such as cooking, washing and ironing of his clothes. She refused to wash his underwear, claiming that they were stained with his feces, an act he felt, was aimed at demeaning and embarrassing him. The respondent was too ignorant of her wifely and motherly duties, which ignorance had on several occasions made him to sleep without a meal since it became uncomfortable for him to ask their maid for food daily. That instead of cooking meals for their family, she chose to buy *take away* food and would sometimes serve food for only herself, without

caring about whether he had eaten or not, acts which he said exhibited her self-centeredness.

[19] The petitioner was certain that the respondent was practicing witchcraft, as he would sometimes wake up in the middle of the night to find her moaning and groaning sexually, while stark naked. He would hear her appreciate her unseen sexual partner for satisfying her sexually, which sexual act would result in to her bleeding sometimes. Whenever he confronted the respondent about her conduct, she admitted to making love to spirits and further informed him that she grew up having sex with spirits and that the same thing was happening to her sisters.

[20] He testified that the respondent deprived him of conjugal rights and threatened to slay him with a knife, which he saw her hold on several occasions, if he ever dared to touch her again. That she insulted his manhood, when she alleged that his penis was unbecoming and she would only indulge in sex with him when she wanted to become pregnant. Unfortunately, after denying him conjugal rights, she would have sexual intercourse with an unseen thing or person.

[21] From 2015 up to 23<sup>rd</sup> February 2019, the petitioner left their bedroom and decided to share their children's bedroom from where he discovered that the same sexual acts that the respondent practiced were being performed by spirits against their own daughters at night, which acts frightened their children to the extent that he had to comfort them whenever it happened and when he brought up the matter to the respondent's attention, she did not give him any reply.

[22] After he separated with the respondent, he would visit their children at school. On one occasion, their oldest child informed him that the respondent went with her and her siblings to a salon to have haircuts and later on, she took them to another location, where their scalps were cut. Subsequently, his youngest daughter begged him not to have her scalp cut again. He checked child's head and saw

threadlike cuts on her scalp. He assured her that he would not let it happen again.

[23] The petitioner had lost some of his clothes mysteriously, including a red shirt that the respondent bought for him. He wore the said shirt once and never saw it again. When he asked her about its whereabouts, she asked him whether he would change if the shirt was brought back. To him, a thief could not have stolen his said clothes, since their home was located in a secure place.

[24] On several occasions, he would wake up just in time to find the respondent hovering over him. That luckily for him, he would wake up before she could do him any harm then she would swiftly leave the room.

[25] He decided to consult his friends, priests, pastors and family members among other people, concerning his family's predicaments. They declared to him that the respondent's conduct amounted to indulging in witchcraft practices. According to him, her indulgence in witchcraft was intended to make him insane, then ultimately kill him and make it look like it was an accident. According to him, the respondent's witchcraft practices are deep rooted and that she has been involved in them for a long time and that in order to protect their children from being stereotyped, he had decided not to disclose all the details about her witchcraft in his evidence.

[26] The petitioner confessed that he sought solace outside his marriage, due to the respondent's behavior towards him. He wasn't proud of his decision to have an extra marital relationship, but was glad to have left their home, because his said decision had saved his life. He declared that it was never his intention to remain celibate, maintaining that he did not have any extra marital affairs before 2013, contrary to the respondent's unsubstantiated allegations. That in her email dated 9<sup>th</sup> October 2013, addressed to her mother, the respondent had admitted that while a one Pelga had used words of



endearment in her email communication to the petitioner, he had replied Pelga's emails plainly, while questioning the meaning of her words. He admitted that Pelga was his ex-lover, whom he was financially supporting even after his marriage to the respondent, because she was a single mother. He stopped giving her help in 2013.

[27] The petitioner and the respondent had attended counselling sessions to no avail, and that instead of improving, their communication had actually worsened to the point that he felt worthless and inferior as a husband. That that is the reason why he copied the email correspondences between himself and the respondent, dated 7<sup>th</sup> October 2013 (**Exhibit P2**) and 9<sup>th</sup> October 2013 (**Exhibit P5**) in which he had complained about the respondent's conduct, to the respondent's mother whom he regarded as his own mother, having grown up with the respondent in the same neighborhood. That in response, his mother in law counselled them to resolve their disputes amicably before they could escalate.

[28] He asserted that in one of her replies to her mother, the respondent admitted being hot tempered, saying that whenever she got angry, she would become verbally aggressive as shown in her SMS message to him dated 11<sup>th</sup> July 2018 (**Exhibit P19**), where she told him that: *"you know what I am capable of ..."*. All lengthy affectionate conversations with the respondent had stopped in 2013 and that she had confirmed this fact in her text message to him dated 15<sup>th</sup> November 2018 (**Exhibit P15**), in which she thanked him for the two happy years of their marriage.

[29] Before the petitioner left the respondent, his mental health had become unstable as the respondent had made him feel inferior and less manly. He had also become antisocial. As a result, he lost a job in 2014 and was about to lose his current job too, due to his mental instability, which was responsible for his failure to concentrate on his job. He was feeling belittled by the respondent who would call him

names. He became depressed and lost self-esteem, injuring his productivity at work. His circumstances made him fear for his life, believing that the respondent was capable of killing him. He thus developed an acute dislike for her, placing their children in a hostile environment due to the several arguments between him and the respondent. That the marriage between them has become devoid of love and peace. It was against that background that he decided to move out of their home. He asserted that the two of them had only remained together because of the fear of negative public opinion.

[30] At the beginning of their marriage, the respondent left the country in pursuit of a residency in the United States of America, leaving behind their one-year-old child, whom he had to take care of during the respondent's absence. That despite his tight budget, he still managed to financially support the respondent and took out loans to facilitate her expensive lifestyle. However, the respondent failed to get the stated residency after the six months and returned home to continue insulting and irritating him. He no longer has any respect for the respondent and therefore will never love her again, due to her bad traits and also because he fears that she is capable of killing him. He believes that the respondent's behavior was ignited by her assumption that the petitioner would always need her and would never have anyone else in his life.

[31] Concerning the disputed properties, the petitioner testified that he acquired those properties through salary loans and through re-financing of the loans. He stated that he acquired the condominium in Nalya before his marriage to the respondent and it was his brother Godwin Ayebazibwe who bought the said property on his behalf through the power of attorney he had given him. The petitioner financed the said condominium through a mortgage from Housing Finance Bank and admitted that the respondent gave him twenty million shillings (20,000,000/=) to pay the said mortgage. When he

finally sold off the condominium, the respondent consented to the sale in order to enable him pay off some debts, including the 20,000,000/= she had lent him.

[32] In respect of the land that he acquired in Kakyiika - Mbarara, containing rental rooms, it was his evidence that the title to that land is registered in his and the respondent's names, notwithstanding the fact that he bought the property by himself and it is the respondent receiving rental income from the said property.

[33] At their traditional marriage ceremony, the respondent's father gifted both of them half an acre of land in Lubowa. He is willing to relinquish his interest in the said land and give it wholly to the respondent.

[34] In regard to land in Gayaza - Nakasaija, he testified that he had deposited some amount of money on it, but has since failed to complete its purchase due to financial constraints. The title to the said land was processed in his name and was to be given to him when he completed payment of the cost price of the land, but since he had failed to complete its purchase price, the said land was taken by Charlotte Byarugaba and Andrew Kibuuka. The respondent instituted caveats on the said land. The petitioner prayed that this Honorable Court directs that the respondent proves her contribution towards her alleged acquisition of the said land and deals with the bonafide owners of the land who have acquired an equitable interest on it.

[35] As for the land in Kitagobwa, the petitioner testified that he bought it without consulting the respondent, although it was his intention that the property benefits both of them eventually. According to him, his action in so doing was common practice in their home, since the respondent too, had never informed him when she secretly acquired property. He started that he entered into an agreement with a contractor to build a house on the said property, but stopped making payments to the said contractor, whom he owes 293,246,259/=.

[36] About the education of their children, the petitioner's evidence was that the respondent had never given him the children's school reports or circulars, despite the fact that he pays their school fees diligently and that as a result, it had become difficult for him to fulfill his responsibilities as their father.

[37] The petitioner said he is willing to support all his children, including the ones he had produced with the respondent. He declared his intention to treat and love his children equally, regardless of who their mothers are. He promised to pay the children's school fees and medical bills, even as he pursues his divorce from the respondent. He is also willing to pay for the children's house rent if the children physically will live with him, maintaining that the respondent who is gainfully employed should also take responsibility for raising their children.

[38] The petitioner asserted that ever since schools closed due to Covid 19, he had not received any report about the welfare of their children, especially in regard to their progress academically. He refused to pay the school fees of the oldest child, because after paying her first term school fees, he had not received a report about her performance from the respondent. He was shocked to receive an email with an invoice attached to it, from the child's school, demanding for second term fees. He distanced himself from that demand because he had not received the child's report.

[39] On the question of the provision of food for the respondent and the children, the respondent had asked him to consult with their maid before buying food for the family as shown in **Exhibits P7** and **P8**, which conduct he found to be quite offensive.

[40] About his current place of residence, the petitioner testified that he had left their home and now lives in Gayaza - Nangabo village, with a one, Freda and three children namely: Ankunda Twesigye, Sylvia Nabukenya and Patience Nuwahereza. He produced Ankunda Twesigye

with Freda, but is assisting the latter two children who are not his own. He confirmed the fact that he is the father of three other children namely: Junior Ronny Twesigye, Stephen Ahumuza and Natasha Asiimwe aged about 10 - 11 years, 6 - 7 years and 4 years respectively. He had a relationship with Patricia Asiimwe before his marriage to the respondent and together, they had Junior Ronny Twesigye who lives with Asiimwe in the United Kingdom. Stephen Ahumuza and Natasha Asiimwe are children born to him and Charlotte Byarugaba, during the subsistence of his marriage to the respondent, when the parties were living separately, although in the same house. That Ankunda Twesigye whom he produced with Freda, was born after the petitioner left the parties home. Charlotte Byarugaba is his ex-girlfriend with whom he stopped relating with, except in respect of their children.

[41] The petitioner averred that if this Honorable Court forced him to stay married to the respondent, it would in so doing put both their lives in danger and expose their children to growing up in a hostile environment.

[42] PW2 was James Muzinga, who is a contractor and the former driver for the parties' children. He testified that as an Uber driver, he was hired by the parties to transport their children to and from school, for about a year. His testimony supported the petitioner's testimony about the fact that the petitioner would sometimes meet with the parties' children after their school day, buy them food and clip their nails, when he found them unkempt. According to him, the children were always happy to see their father.

[43] He further testified that the respondent was very furious when she learnt that their children were meeting with the petitioner through the witness. She subsequently called and warned him against letting the petitioner see them. That despite the warning, he continued taking

the children to meet the petitioner, which act subsequently led to the cancellation of his contract by the respondent.

[44] He also stated that the petitioner has helped him pay his own children's fees and provided for them when he was unable to. That his dues in the transportation contract were promptly paid by the petitioner. He corroborated the evidence of the petitioner regarding the cuts seen on Siima's scalp.

[45] PW3- Moses Twinomujuni is the managing director of Tad Technical Services Ltd, a construction company that he owns with his wife, who is its co-director. He testified inter alia that their company was contacted by the petitioner to construct a house at Kitagobwa Block 120, Plots 1211,1212 and 1210 at a contract price of 700,000,000/=. The works commenced on 4<sup>th</sup> January 2017 and payments for the same were promptly made to him by the petitioner for a period of two years, but subsequently, the petitioner halted all works, citing his failure to find the land titles of the property. At the time that the construction was halted, the value of the remaining work was 527,000,000/=. The petitioner then paid his company 234,000,000/=, leaving a balance of 293,000,000/=.

[46] PW3 stated that when petitioner failed to pay the balance of the sum owed to their company, he instructed his lawyers to collect it from the petitioner and to secure his interests as contractor. They commenced legal proceedings against the petitioner for the recovery of all money owed for the construction of the house as agreed, the interest accruing as well as legal costs and damages. He was later informed that another party was claiming the same property that he was constructing and yet it was only the petitioner who had contracted him and made payments to him for the works he had done, and to whom he had issued receipts for the said payments. He is the author of the bill of quantities (**Exhibit P25**). He admitted in his cross examination, that he quoted for iron sheets at page 7 of the said bill.

He also admitted not quoting for roofing tiles, since according to him, the petitioner had initially specified that he would provide the roofing tiles himself. It was also his testimony in cross-examination that when he was constructing the roof, he was making a tiles roof and not an iron sheets one. The cost of the roof is 58,000,000/= million as per **Exhibit P25**.

[47] The petitioner testified further that while their company sources for work from newspaper adverts, direct sourcing or through clients whom they have previously worked for, in respect of government contracts, their company passes resolutions in respect of specific transactions and complies with all the contractual requirements of the government of Uganda. With respect to private individuals, no formal resolutions are created by the company and once a contract is agreed on, the company embarks on it straight away.

## **THE RESPONDENT'S CASE**

[48] Esther Kabaswaga, a medical doctor and close friend of the respondent testified as DW1. She informed this court that she pursued a course in medicine together with the respondent in the United States of America and during that time, the petitioner unconditionally offered his full support to the respondent. It was her testimony inter alia that it was never the intention of the respondent to abandon her marriage as had been alleged by the petitioner. She averred that the parties' marriage was overflowing with love, until the petitioner's extramarital affairs were discovered by the respondent.

[49] In her cross examination, she described the petitioner as a loving and caring husband who had decided to solely care for the family, when his wife went to study in the USA. She admitted that she had not attended any meeting in which the parties had agreed that the respondent travels to the USA to undertake a residency, neither was she copied in on the emails the couple exchanged.

[50] In her re-examination, DW1 reiterated her evidence in chief, testifying that from the supportive conduct of the petitioner, she got the impression that the parties agreed that the respondent pursues her further studies in the USA.

[51] Athan Muhwezi, a businessman and a brother in law of the respondent testified as DW2. His evidence was that he is the son in law of the respondent's father, having been married to the respondent's sister for a period of twenty-five (25) years. He had known the petitioner from the beginning of his marriage to the respondent.

[52] He testified *inter alia* that he was enraged when an email was copied to him by the petitioner, in which the respondent's mother was accused of practicing witchcraft and introducing the respondent to the same practice. The witness had never heard that the respondent's birth family was involved in the practice of witchcraft. He then emailed the petitioner, expressing his displeasure with the false and damaging allegations that he labelled against the respondent's family.

[53] During his cross examination, he admitted that he had never lived with the couple, although he had lived with the respondent. He admitted that he would not know if the respondent's family practiced witchcraft, since he had never lived with them. In re-examination, he reiterated his evidence in chief.

[54] The respondent testified as DW3, corroborating portions of the petitioner's evidence, when she said that she had known the petitioner for approximately twenty (20) years and that they had been married for eight (8) years and four (4) months. The two of them enjoyed a marriage overflowing with love and care when they lived together. That whenever they were apart, they would communicate their feelings through electronic messages. Her evidence agrees with DW1's testimony regarding the fact of her having travelled to the USA to pursue a residency and internship, with the support of the petitioner. During her stay in the USA, the petitioner generously supported her.



She was using his unlimited credit card. She asserted that as a couple, they had planned to move to the USA with their first born child in the event that her residency was successful, but that unfortunately, she failed to get the residency.

[55] The petitioner was also absent from their family for a period of six (6) months at the time when she was pregnant with their first child. She was studying for board exams then, while working and taking care of their family singularly.

[56] Regarding the petitioner's allegations that she was cruel, the respondent testified that the petitioner seeks to rely on a few excerpts of their conversations taken out of context, as proof that she is abusive, when in fact both of them were both involved in a quarrel for which they should both take responsibility. The unpleasant exchange of messages between them was because they were both upset. She stated that the email she addressed to the petitioner was due to her agitation about his extra marital relationship with a one, Pelga Origasha. She stated that the petitioner had interpreted her expression of disappointment concerning his extra marital affairs as her being cruel towards him, which conclusion was far from the truth. She admitted referring to the petitioner as a sissy, just because she felt that he was not man enough to resolve their marital problems between themselves, but had instead reported their differences to her mother.

[57] She complained about the derogatory names given to her by the petitioner, such as: witch, evil, and Delilah, among others. That nonetheless, in a bid to save their marriage, she subsequently apologized to the petitioner for using unkind words towards him.

[58] She insisted that their marital problems begun as a result of the petitioner's infidelity, evidenced by the three children that he sired outside of their marriage. When she confronted him about his infidelity, he became abusive, intolerant, and began spending nights away from home without any justification. He would spend weeks outside their

home, without offering any explanations to her. As if that was not enough, he reminded her that he had dumped her. When she found out about the petitioner's children born outside their marriage and confronted him, the petitioner asked her to inform her mother that those children's birth was an unintended mistake. At that instant, she pleaded with the petitioner not to communicate with her mother about his infidelities, because she feared for her mother's health if she got to know the truth.

[59] At one point, the petitioner strangely accused her of having an extra marital affair. Regardless, she kept her marital vows, hoping that the petitioner would stop having extramarital affairs and focus on their marriage. Instead, he picked what was left of his belongings from home, including their land titles and left, abandoning her and their children.

[60] His decision to leave subsequently caused her stress, mental torture and embarrassment. It affected their children, who have occasionally asked about the petitioner's whereabouts and wonder whether he would ever return home. She asserted that attempts at answering their children's questions have caused her immense pain, as she feels that the petitioner's actions have affected their children emotionally.

[61] She refuted the petitioner's statement that he had left home in order to protect their children from growing up in a hostile environment. She does not recall engaging with him in a quarrel in the presence of their children. He left when their second child was still very young, while their last born had not yet been born.

[62] The respondent challenged the petitioner's statement that she is a self-centered wife who denied him food. She insisted that she took good care of him and their children, ensuring that food was always prepared, the house cleaned, all clothes were washed and their children were bathed among other family responsibilities. She

maintained that she washed and ironed the petitioner's clothes herself. Their maid would only assist her execute the said chores when the respondent was practically unable to do so, owing to her job engagements. She accused the petitioner of refusing to dine with the family at home, on several occasions.

[63] The respondent in her testimony also rebutted the petitioner's claims that she is unhygienic and incapable of cooking. Her evidence was that the petitioner's aim in his testimony is to falsely portray her as a lazy, dirty and an irresponsible wife, whereas not. She asserted that as a medical doctor, she knew about the repercussions of living in a dirty environment and that the petitioner was not fair in making those false statements against her. She stated that the petitioner had conspired with James Muzinga (PW2) to falsely testify that their children had dirty finger nails.

[64] Regarding the petitioner's displeasure with her request to him to consult their maid before buying matooke, she testified that it was unfortunate that the petitioner had mistaken her advice to be an insult to him and yet she had given him genuine advice in good faith, since it was not necessary for him to buy much matooke for their small family, given its short lifespan.

[65] She admitted ceasing to wash the petitioner's underwear, because she felt disrespected to do so, considering the fact that the petitioner expected her to wash his undergarments after he had shamelessly indulged in extramarital affairs.

[66] Other than pre-marital counselling, the respondent refuted the petitioner's claims that they had attended counselling sessions as a couple. They had planned to go for counselling but did not do so, since the petitioner refused to attend counselling, claiming that their disputes could be resolved between them. The petitioner subsequently referred her to a one pastor Haruna and a lady known to her as Margret, to help her cope with his lifestyle.

[67] She admitted the fact that the petitioner had emailed her mother following their unpleasant exchange of emails. On the petitioner's claims that respondent and her extended family members were involved in witchcraft, she asserted that they are baseless, unfounded and shocking to her, considering the fact that neither herself nor her parents had ever been involved in the practice of witchcraft. It was thus her evidence that the petitioner's testimony that she was having sex with a spiritual being, are simply divisionary, intended to portray her as a witch. She denied that the petitioner had ever confronted her about her alleged involvement with spirits and insisted that their sex life was only negatively affected when the petitioner refused to make love to her and moved into their children's bedroom. She has never threatened to kill the petitioner and refuted his claims that he caught her hovering over him with the aim of harming him.

[68] She also denied the petitioner's allegations that she had cut their children's scalps in witchcraft practice and that she had used his t-shirt for witchcraft rituals. She insisted that she never had any conversation with the petitioner about his said t-shirt. That the petitioner was in making such gross allegations, looking for reasons to end their marriage. As a Christian, she found his allegations about her indulgence in witchcraft quite demeaning.

[69] Regarding his interaction with their children, the respondent testified that the petitioner was always welcome home to interact with their children and therefore his allegation that he was denied access to the children is false. That instead, it is evident that it is the petitioner who is not interested in their children, evidenced by his pronouncements to her mother in his email.

[70] She stressed the fact that despite the misunderstandings between them, she unconditionally loves the petitioner and hopes that he will return home, although he insists on undermining their marriage

as shown by **Exhibit D18**, wherein the petitioner stated that the respondent could not use a document to force him to be with her.

[71] Regarding properties, she agreed with the petitioner's evidence that the Nalya condominium was purchased by mortgage through Housing Finance Bank. Although she was not married to the petitioner at the time of its purchase, the house was bought with the intention of making it their matrimonial home, which explains why she was entrusted together with the petitioner's brother Godwin, to look for the property. The said property later became their matrimonial home. She expressed sadness that the petitioner was diminishing her contribution in the acquisition of the said property, given the fact that she had contributed to the mortgage payments and there was a time when she was barely left with any money for survival, since the petitioner was away for his studies in Germany, as proved by an SMS chat between the parties (**Exhibit D3**). She contributed to the acquisition of that property when she paid 1,200,000/= on the mortgage in March 2011 and was thanked by the petitioner for so doing.

[72] She admitted receiving financial support from the petitioner when he was studying in Germany. The money was to cater for the family's basics needs as well as for the purchase of a RAV4 motor vehicle. She explained that although the money the petitioner sent her for the month of March 2011 was more than what she had expended on the mortgage, it was not sent for repayment of the mortgage, but for other purposes, including the purchase of the RAV4 and payment for basic needs. She maintained that at the time he sold off the Nalya condominium, the respondent had already paid off the bank mortgage. She signed the sale agreement of the Nalya condominium. She admitted that the twenty million shillings the petitioner deposited into her account was repayment of the loan amount that the petitioner had borrowed from her friend Esther with whom she had maintained a joint bank account.

[73] Concerning the land at Gayaza-Nakassajja, it was her evidence that payments for that piece of land were completed and agreements were made, in which they both signed as purchasers of the property. However, when she returned from the USA, she learnt that the petitioner had processed title deeds for the said property in his name only, without considering the fact that they had purchased it together. That instead, the petitioner conspired with one of his mistresses Charlotte Byarugaba, to make it appear as if she had purchased the land, so as to defeat the respondent's interest in it. She however admitted during her cross-examination that she did not contribute any money towards the purchase of the said land.

[74] For the land in Kitagobwa, it was the respondent's evidence that it was acquired through a joint contribution by the parties. It was not true that they owed the contractor any balance for his construction work of the said house. She was not aware of any construction agreement purportedly made between the petitioner and the contractor in respect to that property and that the alleged agreement was part of the petitioner's scheme to undermine her interest in the said property. That the house on the said land was developed purposely as their matrimonial home and was a result of contributions made by both of them. She further testified that both parties' names were written on the title deed, which is in her possession, although the petitioner did not know that she had kept the title. When the petitioner was gathering up the rest of his belongings to leave, she picked up an envelope from a suit case containing the family's documents. Her intention was to remove their oldest child's birth certificate. Coincidentally, the said envelope also had in it the title for the Kitagobwa land.

[75] As for the property in Kakyiika in Mbarara, she testified that it hardly generates a monthly income of 800,000/=, as alleged, since it is dilapidated and requires renovation. Some of their tenants have not

paid rent for a long time, although if they all paid up, it would amount to a total of 660,000/= and not 800,000/= monthly. That other than the said rental amount, she had not received any other money from the petitioner after he abandoned the family. She proposed in her testimony that she surrenders the Mbarara rental property to the petitioner to collect rental proceeds and remit them to her for the maintenance of their children. She declared that although her name was not printed on the sale agreement of the land in Mbarara, she was a joint tenant with the petitioner as reflected on the title. She did not possess the said title.

[76] The respondent insisted that the petitioner had stopped paying rent in April 2019 and also stopped paying school fees for their last two children. As a result, she struggled and cleared the rental arrears and the balance of her bills. She made efforts to communicate with the petitioner about their children's welfare in vain.

[77] The respondent asserted that despite what has transpired between them, she still believes that their marriage will work and prays that this honorable court does not dissolve it.

[78] In cross examination, contrary to her email **Exhibit D6**, in which she admitted to her mother that she was short tempered, the respondent testified that she was not a short tempered person. She stated that misunderstandings in their marriage developed after about three or four years of their being married and that **Exhibit P15** was just a conversation in which she appreciated the petitioner for the first two blissful years of their marriage when the he gave her his best.

[79] She further testified in cross examination that when she asked the petitioner to support their children in her email communication admitted as **Exhibit D17**, he replied in **Exhibit D18** accusing her of practicing witchcraft.

[80] She explained that she had referred the petitioner to their maid Stella, because she usually communicated with her whenever he brought food home.

[81] To the best of her knowledge, the petitioner did not sustain her stay in the USA through loans. That instead, she used his credit card, issued by his banker. She believes that the amount on a credit card is not equivalent to the amount that is on its holders account and therefore the holder spends the bank's money. She was using the petitioner's credit card and accumulated debts on it, which amount the petitioner was clearing.

[82] It was her further testimony in cross examination that the land located in Lubowa was given to the parties and to her siblings by her father, in fulfilment of his dream for his children to pull resources together and jointly build a flat on the said land.

[83] She denied the claim that she owns the piece of land in Buikwe-Lugazi where she grows ginger, explaining that the said land belongs to a one Mr. Werikhe who is her business partner.

[84] She said the reason as to why she had refused to let the petitioner take their children with him to church and why she asked him to stay within his boundaries was because he had abandoned them.

[85] She agreed that it was her responsibility too, to provide for their children and that she had been doing that all alone after his desertion. She further informed the court that she earns eight million shillings (8,000,000/=) and works at IOM, which job requires much travel to other countries, such as Australia, Sweden and USA and spending about five or six days there.

[86] In reexamination, the respondent said that she might have sent a message to the petitioner stating that they no longer loved each other, but explained that she did so only because she was displeased with the petitioner's actions, given the fact that they were not



communicating well and his relationship with their children was weak, while their own relationship had gone down the drain. She did not want the divorce, but filed the counter petition to fight it, asking for the maintenance of their children and other remedies after the divorce in the event that the court grants it.

[87] She explained that the phrase: *“you know what I am capable of”*, meant that she was incapable of being involved in extra marital affairs since the respondent had accused her of having several marital affairs at the time she made that statement. She denied that it meant that she intended to kill the petitioner.

### **DOCUMENTS ADMITTED IN EVIDENCE**

[88] The following documents were admitted in evidence as the petitioner’s exhibits:

- i. **Exhibit P1** dated 27<sup>th</sup> November 2010 is the marriage certificate of the parties;
- ii. **Exhibit P2** dated 7<sup>th</sup> October 2013 is an email sent by the petitioner to the respondent and copied in her mother, where he asked her to provide a person to help them resolve their marital disputes and further expressed dissatisfaction at being labelled a sissy by the respondent;
- iii. **Exhibit P3** and **Exhibit P4** are undated extracts of online chats between the parties, where they quarreled and in which the respondent called the petitioner a sissy;
- iv. **Exhibit P5** dated 9<sup>th</sup> October 2013 is an email from the petitioner addressed to the respondent’s mother, complaining about the respondent’s abusive behavior towards him;
- v. **Exhibit P6** dated 8<sup>th</sup> October 2013 is an email from the respondent’s mother to the parties, where she expressed disappointment in the manner in which they had handled their disagreements together with a reply from the respondent to her

mother dated 8<sup>th</sup> October 2013, in which she admits that she has a short temper;

- vi. **Exhibit P7** and **Exhibit P8** are SMS chats between the parties, where the respondent asked the petitioner to consult their maid before buying food;
- vii. **Exhibit P9** dated 15<sup>th</sup> February 2017 is an email addressed to the petitioner by the respondent, explaining that she needed money to do a course and for irrigation and other things, amounting to 20,000,000/= from the petitioner;
- viii. **Exhibit P10** is an undated SMS chat between the parties, where the respondent was demanding for 20,000,000/= which she had earlier lent to the petitioner;
- ix. **Exhibit P11** dated 25<sup>th</sup> March 2017 is a bank receipt from Housing Finance Bank, showing a deposit of 20,000,000/= made by the petitioner;
- x. **Exhibit P12** dated 7<sup>th</sup> July 2008 is a power of attorney, granted to Godwin Ayebazibwe the petitioner's brother, authorizing him to purchase a condominium in Nalya and act for the petitioner in all matters related to the purchase of that property;
- xi. **Exhibit P13** is M.A. 363 of 2018 application by Namwangala Ruth seeking for an interim order against the respondent and 9 others in respect of suit land comprised in Bulemeezi Block 562 Plot 15 (Land in Luwero);
- xii. **Exhibit P14** dated 24<sup>th</sup> October 2018 is an online chat between the parties in which they discussed the closure of their marriage;
- xiii. **Exhibit P15** dated 15<sup>th</sup> November 2018 is an extract of a text message conversation between the parties, where the respondent acknowledged receipt of money from the petitioner, asked him to provide her with an adequate amount of money to support their home, to transfer their Mbarara property into her name so that the income generated from the said rental property

- is used to maintain their children and thanked the respondent for the first two years of their marriage;
- xiv. **Exhibit P16** dated 1<sup>st</sup> June 2011 is an exchange of five emails between the parties as proof of the petitioner providing financial support to respondent; prove that the respondent contributed towards the payment of the mortgage of the Nalya condominium;
  - xv. **Exhibit P17** dated 1<sup>st</sup> March 2011 is an email conversation between the parties, with attached MoneyGram receipts of funds sent to the respondent by the petitioner;
  - xvi. **Exhibit P18** dated 9<sup>th</sup> October 2013 is an email addressed to the respondent's mother by the respondent narrating the story of the petitioner's infidelity;
  - xvii. **Exhibit P19** dated 11<sup>th</sup> July 2018 is an SMS chat between the parties, in which the respondent stated: "U knw m and wat am capable of"
  - xviii. **Exhibit P20** dated 14<sup>th</sup> March 2016 is a chat between the parties, where the petitioner was complaining about the respondent's lack of hygiene;
  - xix. **Exhibit P21** dated 22<sup>nd</sup> October 2017 is an extract of an online chat between the parties with a photo of their 2<sup>nd</sup> child attached, where the petitioner informed the respondent that he had taken their child to the salon for hair opening and washing;
  - xx. **Exhibit P22** dated 8<sup>th</sup> May 2019 is a demand notice from Tad Technical Services Ltd;
  - xxi. **Exhibit P23** dated 2<sup>nd</sup> Jan 2017 is a letter from Tad Technical Services Ltd to the petitioner and the attached quotation for constructing a house;
  - xxii. **Exhibit P24** dated 4<sup>th</sup> January 2017 is a contract for building a residential house at Nakanaku between the petitioner and Tad Technical Services Ltd;

- xxiii. **Exhibit P25** is an undated a bill of quantities for the construction of a residential house for the petitioner at Kitagobwa;
- xxiv. **Exhibit P26** is an undated a contract between Ronald Twesigye and Professor James P. M. Ntozi for the sale of a condominium unit in Nalya; and
- xxv. **Exhibit P27** dated 23<sup>rd</sup> February 2019 is a chat between the parties, where the respondent asked the petitioner not to take their children to church with him and asked him to respect boundaries;

The following exhibits were admitted in evidence for the respondent:

- a) **Exhibit D1** dated 7<sup>th</sup> July 2020, is an email by the petitioner addressed to the respondent's mother and copied to the respondent, and 6 members of her family, accusing the respondent's family members of witchcraft and informing them that he had nothing to do with the respondent, her children and her family;
- b) **Exhibit D2** dated 10<sup>th</sup> July 2020 is an email conversation from (DW2), in response to **Exhibit D1** - petitioner's email of 7<sup>th</sup> July 2020;
- c) **Exhibit D3, Exhibit D3(a), Exhibit D3(b), Exhibit D3(c), Exhibit D3(d), Exhibit D3(e)** dated 13<sup>th</sup> February 2011, 15<sup>th</sup> February 2011, 23<sup>rd</sup> February 2011, 28<sup>th</sup> February 2011, 6<sup>th</sup> March 2011 and 6<sup>th</sup> August 2013 are electronic love messages between the parties;
- d) **Exhibit D4** and **Exhibit D4 (a)** dated 16<sup>th</sup> and 18<sup>th</sup> February 2011 are email conversations between the petitioner and the respondent, about the petitioner's support of the respondent in acquiring her residency status in the U.S.A;

- e) **Exhibit D5** (same as **Exhibit P5**) dated 9<sup>th</sup> October 2013 is the petitioner's email, addressed to the respondent's mother, complaining about the respondent's abusive behavior;
- f) **Exhibit D6** (same as **Exhibit P6**) dated 8<sup>th</sup> October 2013 is an email from the respondent's mother to the parties, expressing disappointment in the manner in which they had handled their disagreements, and a reply from the respondent to her mother also dated 8<sup>th</sup> October 2013, in which she admitted being short tempered;
- g) **Exhibit D7** dated 14<sup>th</sup> July 2015 is an email addressed to the petitioner by the respondent apologizing for overstepping her bounds and speaking to him unkindly; she also asked him to propose a way forward on how to deal with their marital problems;
- h) **Exhibit D8** is an undated document from an unknown author but said to be from a one Pelga, who was apologizing to the respondent for her involvement in adultery with the petitioner;
- i) **Exhibit D9** dated 5<sup>th</sup> October 2013 is an extract of an online conversation between the parties in which the respondent asked the petitioner to stop involving her mother in their matrimonial disputes, complained about the petitioner's uncaring behavior towards her and requested him to be more loving;
- j) **Exhibit D10** dated 1<sup>st</sup> March 2011 is an extract of online conversation between the parties, where the petitioner assured the respondent that he would not commit adultery against her;
- k) **Exhibit D11, Exhibit D11(a)** and **Exhibit D11(b)** are three photographs, showing the dilapidated condition of the parties Mbarara property;
- l) **Exhibit D12** dated 8<sup>th</sup> July 2019, are receipts of payment of rent arrears by the respondent for 15 May to 14 July 2019;

- m) **Exhibit D13** dated 29<sup>th</sup> February 2020 is an email from Parenting Uganda to the respondent demanding for the payment of school fees for the parties' two youngest children;
- n) **Exhibit D14** dated 3<sup>rd</sup> July 2020 is an email from Daffodils Education Services addressed to the respondent, forwarding to her the petitioner's response to their invoice for school fees sent to him, in which he denied having any business with the school and stated that the message had been wrongly placed;
- o) **Exhibit D15** is a set of emails dated 12<sup>th</sup> January 2020, 26<sup>th</sup> November 2020 and 10<sup>th</sup> July 2020 in which the respondent communicated with the petitioner about the following: the need for school fees for their youngest child; the need for the two of them to discuss matters concerning the welfare of their children; the illness of their first child; and her appreciation of the petitioner' payment of school fees for their youngest child's fees.
- p) **Exhibit D16** dated 19<sup>th</sup> Jun 2015 is an email from the petitioner addressed to the respondent, apologizing for his actions;
- q) **Exhibit D17** dated 6<sup>th</sup> July 2020 is an email from the respondent, to the petitioner, asking him to provide their children's basic needs; and
- r) **Exhibit D18** dated 6<sup>th</sup> July 2020 is a response by the petitioner to the respondent's email accusing her of witchcraft, asking that she repents and informing her that there is no law that can force one to be married to another.

## **REPRESENTATION**

[89] Mr. Andrew Wobwezi represented the petitioner, while Mr. Edward Obbo was counsel for the respondent. Both counsel were permitted to file written submissions in support of their respective cases.

## **DETERMINATION**

[90] I have carefully considered this petition, the answer to the petition, the evidence adduced by the parties, the submissions of both counsel, as well as the law applicable.

[91] The five issues raised by the parties for determination are:

1. Whether there are grounds for dissolution of the marriage between the petitioner and the respondent;
2. Whether the parties have matrimonial property and if so, what proportion is each party entitled to;
3. Whether the parties are entitled to be given joint custody of the children and if not, who should be given custody of the children;
4. Who should provide maintenance for the children; and
5. What remedies are available to the parties.

### ***Issue 1 - Whether there are grounds for dissolution of the marriage between the petitioner and the respondent.***

[92] On this issue, Mr. Wobwezi submitted that the petitioner is seeking a divorce on the ground of cruelty. He referred this Honorable Court to case of ***Habyarimana V Habyarimana [1980] HCB 139*** for the definition of cruelty.

[93] He submitted that the petitioner had proved that the respondent had been cruel to him, supporting his testimony by producing **Exhibit P3**, which is an email in which the petitioner complained to his mother-in-law concerning the respondent's abusive conduct, which included referring to him as a sissy. According to counsel, it was not surprising that the petitioner became reclusive as a result of the demeaning names he was called by his wife and the insults that she hurled at him, attacking the petitioner's self-esteem and mental wellbeing, causing him resort to heavy drinking and lose his well-paying job. Counsel additionally submitted that the respondent had corroborated the

petitioner's claims in **Exhibit P6**, where she had admitted being a short tempered person who could go on ranting when she was angry. He pointed out that the respondent had once issued a warning to the petitioner when she said: *"you know what I am capable of..."* in **Exhibit P19**, a warning that the petitioner could not take lightly, considering her temperament. That the respondent's threats, had left the petitioner scared for his life.

[94] According to Mr. Wobwezi, the respondent was covering up her cruelty towards the petitioner when she stated in her evidence that what had happened between them amounted to mere misunderstandings amongst themselves. It was Counsel's view that the respondent's defence that she was pushed by the petitioner's infidelity to insult him, was unjustified, since the respondent only cheated her after October 2013, while her abusive mannerisms had commenced way before then. Also, that her accusations about his adulterous past, were unfounded, since she had agreed in her email addressed to her mother, **(Exhibit P18)**, that the petitioner never replied with words of endearment when women wrote to him.

[95] Counsel additionally submitted that it was clear from the evidence, that the respondent was involved in the practice of witchcraft in light of the fact that PW2 had supported the petitioner's testimony that the children of the couple were found with inexplicable cuts on their heads, as well as reddening on the scalp, when PW2 took them to meet the petitioner. Counsel asked this Honorable Court not to regard DW2 as a credible witness for the respondent, considering the fact that he is a son in law in the respondent's family and besides, most of the parties' family problems were kept away from him, as shown by the statement of the respondent's mother in an email admitted in evidence as **Exhibit P6** when she said: *"God Forbid the Athanz and Daddy do learn about this"*.



[96] Mr. Wobwezi pointed out that during cross examination, DW2 admitted that he had never lived with the parties in this matter and was not competent enough to testify on the issue whether or not the respondent did practice witchcraft, since the alleged acts of witchcraft were said to have occurred in the home of the parties. He argued that the petitioner's account of the respondent's witchcraft rituals was sufficient proof that she was indeed a witch.

[97] It was additionally submitted for petitioner that the respondent's withdrawal of the petitioner's conjugal rights also caused him psychological torture. He cited in support of his submission, the case of **Mayambala Vs Mayambala Divorce Cause 3 of 1998**, for the proposition that the denial of the conjugal rights of a petitioner amounts to legal cruelty.

[98] In reply to the first issue about whether there are grounds for dissolution of the marriage between the parties, Mr. Obbo submitted that it is undisputed that the petitioner is guilty of the matrimonial offence of adultery, considering the fact that he begot other children with his two mistresses Charlotte Byarugaba and Freda Luzinda. He declared that the petitioner had confessed that he lives with his mistress Freda Luzinda and that since the petitioner was guilty of adultery, he is not entitled to the grant of divorce. To support his argument, he cited Section 8(2) of the Divorce Act and the case of **Christopher Kivumbi Ve Mariamu Kivumbi (1975) HCB 139**, and prayed that this Honorable Court declines to pronounce a decree for dissolution of marriage as prayed for by the petitioner, because the marital offence of adultery at whatever stage in a marriage remains an offence which should not be condoned. Counsel opined that in the instant case, the petitioner had confessed to committing adultery and had therefore come with unclean hands, being totally unremorseful for his acts of infidelity. According to him, the respondent was rightfully disappointed, after learning about the petitioner's indiscretions.

[99] Mr. Obbo observed contrary to the petitioner's testimony that the respondent became abusive immediately after their wedding, that the parties actually enjoyed their marriage as proved by **Exhibits D3, D4** and **D4(a)**, which were messages they had exchanged, expressing love for one another. Also, the fact that the petitioner supported the respondent's studies for a residency in the USA proves that their marital relationship was healthy at the time. In counsel's further opinion, the respondent had ably explained the misunderstandings between her and the petitioner as having arisen after the petitioner got involved in adultery, especially with Pelga, making her angry enough to express her disappointment the way she did. He asked the court to take note of the fact that the respondent subsequently asked for forgiveness from the petitioner when she had cooled down. Counsel noted that it was not in dispute that the petitioner had continued in his infidelity, resulting into the birth of three children out of wedlock. According to counsel, the petitioner's desertion of the respondent was clearly inspired by his desire to be with his sexual partners and not because of the respondent's alleged cruelty.

[100] Counsel explained that the respondent had called the petitioner a sissy, for the reason that he had failed to address their domestic misunderstandings with the respondent, preferring instead to seek intervention from third parties. Counsel maintained that the evidence before the court shows that both parties had exchanged unpleasant messages with one other. He asked the court to find that the said exchange cannot amount to cruelty towards the other by any of them.

[101] Counsel Obbo also submitted that the petitioner is seeking to rely on **Exhibit D5** to prove that the respondent is a short tempered person, whereas not. That the respondent had explained that the expression of her temperament in **Exhibit D5** was particularly

triggered by memories of rejection and infidelity by the petitioner. Counsel contended that misunderstandings and bitter exchanges are common in marriages and do not constitute cruelty.

[102] Section 4 of the Divorce Act stipulates the grounds for divorce as follows:

*(1) A husband may apply by petition to the court for the dissolution of his marriage on the ground that since the solemnisation of the marriage his wife has been guilty of adultery.*

*(2) A wife may apply by petition to the court for the dissolution of her marriage on the ground that since the solemnisation of the marriage—*

*(a) her husband has changed his profession of Christianity for the profession of some other religion, and gone through a form of marriage with another woman; or*

*(b) has been guilty of—*

*(i) incestuous adultery;*

*(ii) bigamy with adultery;*

*(iii) marriage with another woman with adultery;*

*(iv) rape, sodomy or bestiality;*

*(v) adultery coupled with cruelty; or*

*(vi) adultery coupled with desertion, without reasonable excuse, for two years or upwards.*

[103] The Constitutional Court in ***Uganda Association of Women Lawyers (FIDA) & 5 Others vs Attorney General, Constitutional Petition No. 2 of 2003***, found ***Section 4 of the Divorce Act*** to be unconstitutional, because its provisions were discriminatory against women, contrary to ***Article 31(1) (b) of the Constitution of the Republic of Uganda, 1995***. Consequently, courts of law have since then held that all grounds of divorce, distinctly set out in ***Section 4 of***

**the Divorce Act**, are available to both men and women seeking to divorce.

[104] It is the law that the standard of proof of adultery in divorce cases is above the ordinary preponderance of evidence but not as high as beyond reasonable doubt as restated in **See Habyarimana Veronica v. Habyarimana Perfect (supra)**

[105] Cruelty as a ground for dissolution of marriage has been defined in the same case as follows:

*“To constitute cruelty, the conduct complained of must be serious. It must be higher than the ordinary wear and tear of a married life. It is therefore the effect of the conduct rather than its nature, which is of paramount importance in assessing a charge of cruelty and it must be proved that the respondent however mindless of the consequences has behaved in such a way, which the petitioner could not in the circumstances be called upon to endure and that such conduct caused injury to health and reasonable apprehension of it “.*

[106] In the decision of **Mayambala versus Mayambala (supra)** cited by both counsel, in this case, the Hon I. Mukanza J, citing the decisions in **Russel vs. Russel 1895 P. 313, 1897 A.C 395 and Hortan vs Hortan, 1964 P. 644**, held:

*“... cruelty which is a ground for dissolution of marriage may be defined as willful and unjustified conduct of character as to cause danger to life, limb or health (bodily or mental) or as to give rise to a reasonable apprehension of such danger.*

[107] The court in **Habyarimana Veronica v. Habyarimana Perfect (supra)** pointed out the general rule as to what amounts to cruelty as stated in 12 Halsbury’s Laws of England at pages 270 – 271, which is:

*“The general rule in all questions of cruelty is that the whole matrimonial relations must be considered, and that rule is of special value when the cruelty consists not of violent acts but of*

*injurious reproaches, complaints, accusations and taunts. Before coming to a conclusion the judge must consider the impact of the personality and conduct of one spouse on the mind of the other, and all incidents and quarrels between the spouses must be weighed from that point of view. In determining what constitutes cruelty regard must be had to the circumstances of each case, keeping always in view the physical and mental condition of the parties, and their character and social status”*

[108] The petitioner in his evidence accused the respondent of various acts and omissions, which according to him, amount to cruelty on the part of the respondent. Firstly, he accused the respondent of being verbally abusive towards him and relied on his email addressed to the respondent’s mother (**Exhibit P5**), in which he complained to his mother in law about the respondent’s unfair criticisms and insults against him, as well as her nagging of him. He had lost a job as a result of the mental trauma caused to him by the respondent’s nagging and verbal abuse. The respondent particularly referred to the statement in which the petitioner called him a sissy, a statement he found demeaning, which had negatively affected his self-esteem and mental wellbeing. He adduced **Exhibit P6** a document in which the respondent admitted to her mother that she was short tempered, to corroborate his verbal abuse allegations against her.

[109] Secondly, the petitioner blamed the respondent for being too ignorant of her wifely and motherly duties, and of being unhygienic and lazy, to the extent that she could not cook, wash or iron his clothes, had refused to wash his underwear, accusing him of staining them with his feces, an accusation that had also demeaned and embarrassed him. He was left to ask their maid for food on a daily basis, and sometimes, he slept without food.

[110] Thirdly, the petitioner accused the respondent of denying him conjugal rights and threatening to kill him with a knife that she pulled

out on several occasions when he approached her for sex. She had sex with him only when she wanted to conceive a child and their second and third born children were produced accidentally on the rare occasions when the respondent agreed to get intimate with him.

[111] The fourth alleged conduct constituting cruelty by the respondent was he alleged practice of witchcraft in three ways: first by having sexual intercourse with spirits and initiating their daughters into the practice, secondly by cutting their children's scalps for ritual purposes and lastly by causing the disappearance of his red t-shirt which he suspected to have been used in witchcraft rituals.

[112] The respondent in her evidence flatly denied ever being cruel to the petitioner. The substance of her evidence is that the petitioner's adulterous conduct particularly with a one Pelga Origasha, caused her to confront the respondent about it in anger, but that she had subsequently apologized to him for her response. She maintained that the relationship between them was great at the beginning of their marriage, contrary to what the petitioner would like the court to believe. From the unchallenged documentary proof before me, namely **Exhibits D3, D3 (a), D3 (b), D3 (c), D3 (d), D3 (e)**, and **D4** dated 13<sup>th</sup>, 15<sup>th</sup>, 23<sup>rd</sup> and 28<sup>th</sup> February 2011, 6<sup>th</sup> March 2011, 6<sup>th</sup> August 2013 and 16<sup>th</sup> February 2011, respectively, the petitioner and the respondent were communicating well, as expected of a happy couple. From these email and text message correspondences, it is evident that the two of them had planned to relocate to the USA in the event that the respondent successfully completed her residency.

[113] Apparently, after August 2013, as evidenced by **Exhibit P3** and **Exhibit P4** which are two undated online chats by the parties not contested by the respondent, their conflicts arose. The tone of those conversations was incredibly harsh. From my understanding of the conversations in **Exhibit P2** and **Exhibit P5**, they stem from the

contents of this chats below in **Exhibit P3** and **Exhibit P4**, which I quote verbatim:

*Respondent: hehehe, am more mature than u are and I just don't act w/o thinkin abt the consequences. so I wo*

*Petitioner: Ask her nt to ask m anything abt u.....becoz I will tell her that I hv no communication with u*

*Respondent: wen she does ask u, then feel free to volunteer that info. however since she hasn't asked u anymore, I don't expect u to be fillin her in on anything*

*Petitioner: its kind that u do that.... I also had a mum so do not think I sm tying on yours*

*Respondent: or is this ur way of blackmailin me  
wel sorry to say but ur mum was as good as useless to u. u always said that I have never heard say anything nice abt her or even your siblings  
u only dish out the bad stuff*

*Petitioner: what do I get*

*Respondent: anyway Ronnie we r way past you peace fairy tale and am also reali tired of you always turnin the situation so am the bad corp*

*Petitioner: I wish I knew....anyway.... I don't think I hv much more to shar with u. I wish u the best in everything*

*Respondent: so grow up and deal with your issues. u have a lot of problems my friend and I dint bring them upon u...*

*Petitioner: I will drop at your hm what I promised .... but will not go there anymore Jst leave my problems to m... let them nt b your concern*

*Respondent: do wat makes u peaceful, I know u always want to do that*

*Petitioner: They r my problems... so non of your business*

*Respondent: yes, u need to fast and pray that God will teach u to reciprocate wat u get from others. that he will show u the true meaning of love, that he will teach u to care so much for ur partner as much as u want them to give u all the attention in the world*

*Petitioner; Am out of here So annoying*

Respondent: that u will not be first to judge before u think through a moment, that world stuff is not a source of true joy so annoying? u are nauseating! I wanna puke

Petitioner: This partner nolonger exists

Respondent: gosh I feel so much hatred for u now and I would be glad not to hear from u or anything for a while. I will even sacrifice my dia arianna

Petitioner: B careful what u say

Respondent: and ? are u being careful with wat ur sayin?

Petitioner: U think I wsnt to hear frm u at all

Respondent: it takes two to tangle

Petitioner: Can do without u

Respondent: oh no u cant!

[114] That conversation was continued in **Exhibit P4,**

“Petitioner: Can do without u

Respondent: you just kp saying that all the time

Petitioner: I do not need u that much

Respondent: anyhow, the converse is true

Petitioner: u know what it is not worth it

Respondent: hhahahaha, thanks just because u have the money right now, besides that maybe I don't need u too. that much indeed, brilliant for once!

Petitioner: Let me save my breath....u r very abusive, annoying...and will c u the same

Respondent: oh and so are u. by the way I stopped seein the nice u a long time ago am glad at least I pushed on this long now lemme see how much peace u can have u never look for solutions, but only want to make me feel bad about myself. to hell with u

Petitioner: Cool.....

Respondent: I will just laugh. one word for u. ur a cissy



*Petitioner: Think at this point we part ways*

*Respondent: thanks for fwding email to my mum*

*Petitioner: I will initiate it*

*Respondent: sure we do. farewell thee. plan for the court  
sessions for ariannaz custody*

*Petitioner: I will follow it up with the call*

*Respondent: feel free, I feel so much hatred for u, I don't  
give a damn! so much for thinkin ur real man just  
weak in all ways*

*actuali just tell mummy am not interested in  
speaking to her as well lemme fight real hard for my  
residency, thanks for the impetus!*

*Petitioner: just told her anyway*

*cool*

*I hope get it*

*work hard on it*

*indeed*

*with that much hatred ... and your heart*

*I wish u the best*

*Respondent: and wen I get to ug, I will communicate with all  
ur brothers. will actuali email them all those copies of  
letters from the chicks. I have all copies saved up  
and will tell all ur good friens. because I think ur bad  
influence and they shd know the truth. I don't want u  
to spoil my name and I just sit back. prepare for a  
real battle! AM SOOOOOOOO TIRED OF U. all those  
emails of you sleepin with pelga, firting with people's  
wives, the girls in the flat. will give this to mummy  
and I do have some people to even testify*

*people think ur all perfect but u are not*

*and will also tell those peoples husbands/partners*

*don't blame me, u have started it..... looser just who  
cant deal with ur marital issues and keep getting my  
mum involved. hmmm"*

[115] I will paraphrase below the major contents of the email correspondences admitted in evidence for the petitioner as **Exhibit P2** and **Exhibit P5**. **Exhibit P2**, is an email addressed to the respondent by the petitioner dated 7<sup>th</sup> October 2013 and copied to the respondent's mother. He among other things blamed the respondent for hurling insults at him and calling him weak in all ways, including being a sissy or unmanly. This, he said had been going on for some. He explained to her that he had shared his feelings with his mother in law to let her know what was happening between the two of them and to share with her what was eating him up and ask her to speak with the respondent. In that email, he asked the respondent to clearly let him know which person from her family he could reach out to in case he had some issues against her. He proposed that upon the respondent's return, they would sit down and iron out their disputes and deep differences and apologized for having caused discomfort her, hoping that his apology was not too late.

[116] **Exhibit P5** is an email addressed to the respondent's mother by the petitioner two days after **Exhibit P2**, dated 9<sup>th</sup> October 2013, and copied to the respondent. The petitioner was apparently responding to an accusation made to him by the respondent, (which I believe to be in **Exhibit P4** from its contents) in which the respondent had accused him of flirting with the girls of the neighboring flats to their own apartment, as well as with other people's wives. He denied the accusations maintaining that he had made assurances to the respondent who had not believed him. He admitted to receiving one or two phone calls and a text message from a caller the respondent subsequently confronted. He declared that he had then since cut off those communications. He denied ever flirting with those callers whose intentions in calling him, he didn't know. He stated that the fact of his having received those calls did not warrant the abuses that he had

received from the respondent for a long time. He wished for the respondent to desist from calling his deceased mother names, however bad the relationship he had with his said late mother. According to him, he had been in an abusive environment and did not fancy and could not stand living in one.

[117] The petitioner also relied on **Exhibit P6** an email dated 8<sup>th</sup> October 2013, addressed by the respondent to her mother, stated inter alia as follows: -

*“...You know me mummy. I have a short temper and can go on ranting when am angry. I will say some not so kind words. That I have been and am still working on. The other details in the chat we or Ronnie will explain, either when we meet or over skype someday. Otherwise, stay positive, we haven’t lost the battle yet and its not always like this. However, since I stepped in the USA there have been so many insecurities on either side. We are doing our very best. God before us. May the devil never win this.”*

[118] And another email dated 9<sup>th</sup> October 2013, (**Exhibit P18**) addressed by the respondent to her mother which was relied on by the petitioner to prove that the respondent apologized for the unkind words she had said about the petitioner’s mother. Notably, in that email, the respondent explained the source of her anger, which was that she discovered evidence that there was an ongoing relationship between the petitioner and his ex-lover Pelga, in an email that Pelga had addressed to the petitioner, complaining that the petitioner was having a sexual affair with her without giving her anything in return and that the petitioner was taking care of his wife and their first child but had forgotten about her (Pelga). In the said email, the respondent informed her mother that while in the USA, Pelga sent her an email, apologizing for the love relationship she had with the petitioner and informed her that she had aborted the pregnancy of the petitioner. The respondent further stated that the petitioner was seeing a girl named

Sheila who was living in the flats at Nalya. She also had confronted Sheila who stopped seeing the petitioner, but the petitioner was also seeing a lady named Patience at Esami. That it is against that background that she is always criticizing the petitioner and bringing up the past stories coupled with the suspicion she had that the petitioner was hiding something.

[119] In my humble opinion, the online chats (**Exhibit P3** and **Exhibit P4**) above reproduced, are evidence of a quarrel arising from the respondent's infidelity accusations against the petitioner. It is evident that in those conversations, the respondent was the angrier of the two of them and was also the meanest in her choice of words. From my understanding of the above emails exchanged when the respondent was in the USA, the chats in **Exhibit P3** and **Exhibit P4** also happened when the respondent was in the USA pursuing the residency. The fact of her being away for the residency is mentioned and so is the fact that she yearned to return to Uganda to expose the petitioner's gross infidelity. The petitioner had contacted his mother in law to mediate between them concerning those allegations, something that had angered the respondent badly. She subsequently apologized to the petitioner and to the respondent for the gross words used against the petitioner.

[120] It is also apparent from **Exhibit P4** in the respondent's response to the petitioner's threat to divorce her, that their only child at the time was their first born and the respondent did warn the petitioner to prepare himself to fight for the custody of that child. However, without a doubt, after the respondent's return to Uganda, the couple gave birth to their 2<sup>nd</sup> and 3<sup>rd</sup> children who were aged 5 and 3 years respectively, at the time of their testimonies in court. The petitioner tried to convince this court in vain that their said children were produced after what he called "a one off" sexual encounter, since the respondent had denied him conjugal rights. I do not think so, because the said two

children are not twins. The 3<sup>rd</sup> child aged 3 at the hearing of the petitioner's case in October 2020 was most probably conceived in 2017, although the petitioner strangely testified that he left their bedroom and moved to the children's bedroom in 2015, before leaving their home altogether in 2019. The impression I got through his said testimony is that after walking out of their bedroom, he had no sexual contact with his wife. If that was the correct position, their last child would not be his, since he has had no sexual relationship with the respondent since 2015, when he left their bedroom. From his own evidence, he is the father of all the three issues of their marriage and he wants their joint custody with the respondent.

[121] Clearly, when the respondent returned to Uganda after her failing to succeed in her residency, the couple, despite their gross communications in **Exhibit P3** and **Exhibit P4** and the conflict expressed in **Exhibit P2 and Exhibit P5, Exhibit P6 and Exhibit P18** perched things up to the extent that they expanded their family by producing two more children.

[122] While it was the petitioner's testimony that the respondent's insults against him were unjustified, given the fact that his infidelity only started after 2013, he contradicted himself through the evidence in those very documentary exhibits authored in 2013, which show that infidelity was at the center of their disputes and through his testimony in cross-examination on 6<sup>th</sup> of October 2020, when he testified that his son Stephen Ahumuza who was born as a result of his infidelity is aged about 6 or 7 years. His contradictory evidence supports the respondent's evidence that the petitioner was already unfaithful in the year 2013.

[123] The respondent's evidence to the effect that the bitter exchanges she had with the petitioner were as a result of his adulterous conduct, which had angered her, is most convincing to the court. The defence by the respondent that the alleged poor

communication she had with the petitioner was justified on account of his infidelity, is established by his own admission.

[124] Concerning the assertion by counsel for the petitioner that the statement made by the respondent in **Exhibit P19** that: “*You know what I am capable of*”, is proof of a threat to kill her, I agree with the respondent in her explanation, that she meant that the petitioner knew what she was capable of doing or not doing and she made that statement in reply to the petitioner’s insinuation that she could chose to marry, as she had a list of suitors. **Exhibit P19** is a text message conversation between the parties dated 11<sup>th</sup> July 2018. I will quote it verbatim below:

*“Petitioner: You can base your decision on the facts you have. Somehow you choose to get married or not. I can see ypu have a list of the many. Your last sentence summarizes it all. I will say good luck... I am in the know of what happens when and whenever.  
Respondent: I know tht game of reverse psychology from u. **U knw m and wat am capable of**, but u still hv not answered my questions. Can u at least out respect respond to them.”* [Emphasis is mine].

[125] Plainly, the respondent was not threatening to kill the petitioner in that statement and her explanation is plausible, because in her next sentence in **Exhibit P19**, she asked the respondent in kind words to answer her earlier questions raised to him. Moreover, **Exhibit P19** is an excerpt of a long conversation which the petitioner chose not to adduce in its entirety for reasons only he knows. Consequently, I find that the said statement was taken out of context and does not in any way prove cruelty by the respondent.

[126] The petitioner also complained that he was in many occasions not served food by the respondent who made him sleep hungry and that even after leaving their home, the respondent continued disrespecting him asking him, to consult with their maid before buying

food as shown in **Exhibit P7** and **Exhibit P8**. These exhibits are undated text messages admitted without contest and were not contradicted by either party. **Exhibit P7** states:

*Respondent: Am taking the matooke for sale, there is a lot still there. Maybe nxt tym u shd ask Stella to guide u b4 u buy*

*Petitioner: There was only 2 bunches. I had to buy that since there wasn't any in the garden.*

*Respondent: Next tym u ask her b4 u buy such a huge bunch. Hw much was it.*

[127] The undated text message conversation between the parties continues in **Exhibit P8** as follows:

*Petitioner: Advise noted. Maybe I leave the matters of food to you since most times I get it wrong.*

*Respondent: Ask Stella wen buying, it helps. Tht is the point am trying to put across*

[128] The respondent was not happy that the petitioner had bought two big bunches of matooke and yet there was still more matooke at home and asked the petitioner to consult Stella, whom we now know was their maid. I find the respondent's explanation that she asked the petitioner to speak with their maid before purchasing matooke, so as to avoid its wasteful purchase, plausible. The petitioner himself admits in that conversation that in matters of food, he usually got it wrong. However disrespectful the petitioner finds the respondent's request for him to consult the maid to be, he has failed to convince the court to

the required standard that the said request by the respondent constitutes legal cruelty to him by the respondent.

[129] According to counsel of the petitioner, the respondent's cruelty had made the petitioner mentally unstable, a drunkard and caused him to lose his job. He almost lost the current job too, due to the respondents taunting and nagging. I respectfully disagree with counsel for the reasons already given above and also for lack of proof by way of medical reports of mental assessments done by psychiatrists or medical doctors or counselors of the petitioner's mental status and proof of termination of his first employment. The petitioner has failed to prove that they went for marital counselling to try and save their marriage as per his statement in his evidence in chief. The respondent denies that they attended any counselling, save pre-marital counselling.

[130] In any case, the petitioner's own hands are not clean at all. While he adduced **Exhibit P20**, as proof of the respondent's failure in her matrimonial duties, notably, he used (in reply to her plea for understanding on his part) mean words, however honest he believed himself to be, against the respondent while expressing his disappointment about her home management skills. Below is the said text conversation between the parties on 14<sup>th</sup> March 2016 (**Exhibit P20**):

*Respondent: Am so hurt by the words u uttered ths morning after everything an jugglin in this home, many a time without ur help or presence. Tht and many more thngs r permanent wounds in my heart.*

*Petitioner: I note your text. I honestly don't see what you juggle. The house is permanently dirty, kids are dirty because they are left to the maid.... I have no*



*apology for that. You are so used to dirt that you can't even notice. I don't like to associate with dirt. If you are not ashamed for a child to turn up at school dirty, then I don't know u. I intend to have a record of the dirty home I talk about.... its not my responsibility to go after the maid to make sure that work is properly done. This is not the first time I complain about it...I do not care about how many things you are involved in outside the house... its your business but keep the home a home. If the energy you spend sneaking on me was spent on making the home habitable, I would certainly appreciate. Hi, my flight changed from Turkish air at 5 am to KLM at 11 54 pm. I will stay this way until then. [Emphasis is mine].*

[131] Also, in a quite recent email dated 6<sup>th</sup> July 2020 admitted in evidence as **Exhibit D18**, the petitioner in a lengthy email addressed to the respondent accused her inter alia of consulting witchdoctors in Tanzania and the DRC and of making evil covenants against him. He referred to the respondent as “a witch” and an “evil mother”. He further said:

*“The children did not choose to have an evil mother like you and shouldn't suffer your misfortunes. Get out of your witchcraft. You have taken over from your evil mother, who encourages you into witch craft. Please don't wish the same for your children...”*

[132] From the aforementioned, it is obvious that the petitioner is not really the innocent victim of an abusive wife as he claims to be, given the fact that he too has insulted the respondent. The documented correspondences between the parties started in 2013 and were a

result of the respondent's adultery, which he admits. The couple seems to have reconciled after their 2013 disagreements and between 2014 up to 2016 contrary to the allegations of the petitioner, their marriage was stable, since no crude text messages, online chats or emails shared between them have been adduced to establish any cruelty by the petitioner. The parties apologized to each other, when they had overstepped their boundaries, as the respondent apologized to the petitioner in an email 14<sup>th</sup> July 2015, admitted in evidence as **Exhibit 7**, where she stated:

*"I know that I overstepped my bounds and went on so unkindly. I said sorry then and I will say sorry again. About this being reason for you to go sleep with and have another child outside marriage, it was wrong way to vent and we are paying for the consequences. In addition, if that was the case, then what would justify the other affairs after that..."*

[133] In the said email, she asked the petitioner for the way forward on their issues, since he had rejected counselling. Similarly, in an email dated 19<sup>th</sup> Jun 2015, (**Exhibit D16**) the petitioner apologized to the respondent acknowledging that it was he who had made her bitter. He wrote as follows:

*"Dear Susan, I want to express my sincere apology to you and pray that you will find renewed strength and energy within yourself. I have failed myself and ultimately failed you. My actions have caused you bitterness, shame and all the negative emotions which if I were to list them would fill up this mail. I have known you but have not nurtured you to be a woman you were meant to be. I have failed you. I pray you can again let me try with your help. I want to say it here that even in silence, waking up to you has always been my joy. Even when we slept distances apart in the same bed, but hearing your breath just to know that*

*you are there has been my source of strength. I have drained this strength from you but certainly not refilled your own. I want to again be that source of your joy, pride and strength. I appreciate your absence and agree with you to be away as much as you want. I would certainly have done the same or worse if I were in your shoes. But please know that you are dearly missed in your home. Whenever you feel ready, just know that there will be joy in your house. It is not the same without you. I pray for your renewed strength and hope that this mail will relay my deep sincere apology Blessings to you, Ari and Siima. I miss Siima's genuine smile. Ronnie."*

[134] This was an acknowledgement on his part that the bitterness exhibited by his wife, which bitterness he now seeks to convert to call cruelty on her part, had been caused by him. He took responsibility for his failures. Apparently, one can perceive from that email that the respondent had left the home with their children and he was longing for them to return. That apology alone, made in on 19<sup>th</sup> June 2015 (after the couple's conflicts and unforgiving correspondences of 2013), which was admitted without contest and was never challenged during cross examination, negates all the petitioner's allegations of verbal abuse, threats to his life, failure in her wifely responsibilities, denial of conjugal rights as well as the witchcraft by the respondent which I will examine in due course. Of course, that apology is cleverly couched in general terms to avoid mentioning the crux of the matter that led to bitterness by the respondent. However, putting all the pieces of this case together, including the admitted fact that the petitioner has produced three children, (one of whom is aged 7 years) with two women, within the first 8 years of his marriage to the respondent, his apology is clearly understood by this court to be made in respect of his infidelity. It is noteworthy that in June 2015 when **Exhibit D16** was

written, the parties had two children mentioned as at the end of that email. They went on to produce another child after that although from the testimony of the respondent, the petitioner left home before she gave birth to their youngest child.

[135] Regarding the witchcraft allegations, the petitioner accused the respondent of having sexual intercourse with an invisible thing or person and further stated that she was also initiated their children into the same practice. No tangible evidence was adduced by him to prove that the sexual conduct by the respondent and an unseen being that he complains about, amounts to witchcraft. This court is left wondering what the respondent actually meant when he said that his wife was having sexual intercourse with an unseen being in his presence and that she would appreciate the spirit being for satisfying her sexually and also that sometimes, she would bleed. He unfortunately never said which part of the respondent's body would bleed after the sexual encounters in issue. Also, his narrative does not clarify on how he knew that the sexual actions allegedly exhibited by the respondent, were actually being performed with spirit beings. This court is thus left perplexed about the actual nature of the sexual conduct complained about.

[136] His evidence was further that the same spirit(s) would attack their daughters at night and their children, who had been inducted into the witchcraft practice by the respondent, would become frightened after those attacks, necessitating him to comfort them. He discovered the children's predicament when he moved into their bedroom to share it with them. I am left wondering why the petitioner did not seek psychosocial support from any psychiatrist, doctor or a religious counsellor particularly for their children's sake, if their conduct as a result of sexual assaults by spirits, had truly frightened him. He never complained to his mother in law about such a serious matter, the same way he had done with the verbal abuse allegations he complained

about to her and yet it is apparent from his testimony that the said sexual conduct alleged happened before his very eyes.

[137] Does the petitioner want this court to believe that he as an educated, loving and caring father as he claims to be, could abandon his children at home with their mother whom he knew to have initiated them into sexual relations with spirits? Did he care for their welfare at all? The respondent has flatly denied those sexual infidelity claims made against her. The burden is not upon her to prove them. Therefore, he petitioner has not provided adequate evidence about his claims and his testimony does not prove his allegations.

[138] It is noteworthy that his allegation about the injuring of his children's scalps by the respondent amount to child abuse and deserved investigation and prosecution as such. No medical evidence or police reports to confirm that the respondent had cut their children's scalps in her practice of witchcraft rituals were adduced. The testimony of PW2's supporting the petitioner's allegation that the children had cuts on their scalps lacks credibility since PW2 admitted that the petitioner assists him with his children's education. In fact, by siding with the petitioner to stealthily take the children to meet with the petitioner contrary to the respondent's instructions, it is obvious that his allegiance lies with the petitioner. For that reason, I do not find his evidence to be credible. Medical evidence or police evidence would have been more independent in proving that claim or the eldest of the children said to have made the report to the petitioner should have been called to testify on such serious matter.

[139] The petitioner's testimony was that he was informed that the aforementioned acts of the respondent amounted to witchcraft, after consulting his friends and family amount to hearsay evidence, which is contrary to Section 59 of the Evidence Act, Cap 6. In any case, said friend and family members were not called to give testimony and I

have my reservations about their expertise regarding the practice of witchcraft.

[140] It is my esteemed opinion thus that the petitioner has failed to substantiate those alleged acts of witchcraft that he has made against the respondent. In any event, the courts have held that accusing one of witchcraft without proof amounts to cruelty as shown in ***Julius Rwabinumi versus Hope Bahimbisomwe (Civil Appeal No.10 of 2009)***, where the Court of Appeal held that it was not proved that the respondent practiced witchcraft and the act of continually accusing the respondent and her mother of practicing witchcraft amounted to cruelty. In the same vein, I find that the petitioner has been cruel to the respondent in his accusations of witchcraft against her and her family as a whole. In **Exhibit D1**, addressed to her mother, grossly demeans her person and the entire family that raised her, without actual proof of how witchcraft is practiced in “a strong foundation” by the family. The petitioner’s excuse that in order to protect their children from stereotyping, he had decided not to disclose the details of the respondent’s practice of witchcraft in his evidence, is just that: an excuse.

[141] I should mention here that I do find it rather odd that the petitioner did not confront the respondent on the witchcraft allegations before 2020, particularly when he felt that it had affected their children. Moreover, he easily communicated with his mother in law, it should have come up in 2013 or any time after that, before he left home in 2019. He waited until after filing this petition in 2020, as shown in **Exhibits D18** and **D1** before bringing up the witchcraft allegations. In **Exhibit D18**, the email dated 6th July 2020 addressed to the respondent by the petitioner, the petitioner mentioned that the respondent was a witch, which is a habit that she had taken over from her mother. The same was repeated in **Exhibit D1**- an email he addressed to the respondent’s mother where he stated:

*“I am fully aware of the witch craft that has continued to be done with a strong foundation in your family. This having been passed on to her, she has taken the mantle and now her own children are in line. I have nothing to do with her, and her children and your family. I hope you as the mother will communicate this to her in a language she understands....”.*

[142] The petitioner’s cruelty allegations against the respondent fail since he has not been able prove any of them to the required standard of the law and I am buttressed by. **Section 8 (2) of Divorce Act** to dismiss it. The said section provides:

*“Notwithstanding subsection (1), the court shall not be bound to pronounce the decree if it finds that the petitioner has during the marriage been guilty of adultery, or been guilty of unreasonable delay in presenting or prosecuting the petition, or of cruelty to the respondent, or of having deserted or wilfully separated himself or herself from the respondent before the adultery complained of, and without reasonable excuse, or of such wilful neglect of or misconduct towards the respondent as has conduced the adultery”.*

[143] Before I take leave of the matter, I wish to comment about counsel Wobwezi’s submission that the parties’ marriage had irretrievably broken down because the respondent had admitted that it had only lasted for two years as per **Exhibit P15** and also for the fact that in her cross petition, she had prayed for remedies granted only in divorce. The said exhibit reproduces an online conversation dated 15<sup>th</sup> November 2018 between the parties as follows:

*“Petitioner: I hope the money came through*

*Respondent: Seen tx*

*2 million monthly would be sufficient help from your side \* if you want to add tuition, transport and rent, then you add to that. If we move to a big house, I will need a little more support regarding security mainly. Thanks for the 2 years of marriage.*

*Plus if you can transfer Mbarara rentals in my name so I work towards an income source for my children and I. I secure their future. I will be a satisfied mother"*

[144] It is evident in this conversation made in November 2018 that the parties were separated and were mutually agreeing on the issues of maintenance of their children. But things did not go as expected by the petitioner, who subsequently expressed great disdain for the respondent, despite her testimony in the court that she still loves him and wants to make their relationship work. In **Exhibit D18**, which is an email dated 6<sup>th</sup> July 2020, addressed to the respondent by the petitioner, he states as follows:

*"Your mail below refers. You claim ill treatment which is wholly your own doing from the several witchdoctors you consult including those in Tanzania and DR Congo. The actions you wished to befall me are manifesting in your own life. It's good and indeed right when you say I know how you battle through witchcraft which you have continued to practice and shamelessly have bragged that you were left no other alternative but to continue. You have hoped to achieve your ends through witchcraft to the extent of doing whatever possible to have my life terminated but your deadlines have passed and I still breathe and live. To you I am dead and mad, it takes another mad and dead person to expect anything from the dead. ALL THE CONVENANTS YOU*



MADE ABOUT ME HAVE BEEN BROKEN. The updates I have received from you are to inform me how you have decided to proceed with witchcraft and/or to threaten me with more witchcraft. Stop telling lies about updates since you have totally closed me off the affairs of the children. You have done a lot of witchcraft, you are continuing to throw the same in my face. The children didn't choose us as parents yes but what makes u think u have control of who has kids and who doesn't? Do you think that such evil acts will make me run begging you? No way. Or do you think u get more blessings by planting seeds of witchcraft whenever u go? Your witchcraft caused the total breakdown and you think through the same you will retain control over me. The children didn't choose to have an evil mother like you and shouldn't suffer your misfortunes. Get out of your witchcraft. You have taken over from your evil mother who encourages you into witchcraft. Please don't wish the same for your children. Stop the witch craft cycle. Your children do not deserve this. You have collected the rental income from the units in Mbarara Town that you use as you wish. You have always prided yourself on having a well-paying job however as you now indicate that children are a financial burden to you, I am more than happy to have them so that you no longer have to bear this burden. You have made your own court orders depriving me of all access including orders at the schools to deny me access. You denied me access to the children yet u think U can maintain financial benefit in the process because you think I can't live without them. In a further attempt to push me under your evil fangs, you paid a bait to your witchdoctors so that I should never have any more children .... that is very laughable. Who do think you are?? God? You have decided to prolong the court process - which however long it takes, I don't consider you a wife. I strongly regret that I ever

met you. For you information, the marriage that never was is nullified. You therefore can't use a document to force me to be with you. It will never happen and I wonder if your lawyers are advising you well and you are getting that clearly."

THERE IS NO LAW THAT FORCES ONE TO BE MARRIED TO ANOTHER. So I don't know what you are holding onto and for what? The sooner you wake up to these realities, the better. For your information, court is scheduled for 14th July 2020 await the hearing notice. The sooner the court makes orders about dissolving the marriage so they can follow up with maintenance orders, the better otherwise I will not go by your rules. Ronald Twesigye." [Emphasis is mine].

[145] In my assessment, that email, from some of its contents, was a reply to the following email (**Exhibit D17**), dated 6<sup>th</sup> July 2020, sent to the petitioner by the respondent. She stated:

*Dear Ronnie,*

*Hope you are well, I will absorb allllll kind of ill treatment and unfairness from you but I believe Arianna, Siima and Micah do not deserve any of this. They never made that choice to have us as their parents. While you deliberately intend to throw all financial burden on me. I request you to leave the children out of this. Throw all the stones you want at me, but not those three. They know nothing of what is happening and deserve to continue having their basic needs taken care of ..... at the very least their education. I am not going to engage in a "battle" with you (You know me); I will just keep updating/informing you as is my due diligence. Hopefully you choose to do what is right for them. Regards, Susan.*

[146] While it is counsel Wobwezi's opinion that the marriage in issue has irretrievably broken down due to the respondent's cruelty, it is my

humble opinion that the breakdown down of the parties' marriage is the result of the petitioners' cruelty, desertion and adultery, established by the petitioner's own evidence as well as the respondent's testimony and exhibits adduced in opposition of the petition. The ground of irretrievable breakdown of or irreconcilable difference between the parties does not however exist in our Divorce Act and jurisprudence as opined in the decision of the Court of Appeal in **Rebecca Nagidde versus Charles Steven Mwasa Civil Appeal No.160 of 2018**. At the High Court hearing of that matter (**Rebecca Nagidde versus Charles Steven Mwasa Divorce Cause No.70 of 2016**), the ground of irretrievable breakdown of marriage was relied upon by the court to grant a divorce to the parties whose marriage had in effect collapsed. On appeal, the Court of Appeal held:

*".....These provisions of the law may be or appear to be archaic but they still represent the law on divorce, and no court administering the law as it is, can ignore them and instead step up its own requirements such as irreconcilable differences as a ground for divorce. Irreconcilable difference is a ground for divorce in many jurisdictions but until the Divorce Act is amended or a new law promulgated that sets up irreconcilable differences as a ground for divorce, it is not the law of this jurisdiction, however attractive it might be...."*

[147] This decision by the Court of Appeal fetters the hands of this court to move itself on its own motion to grant a remedy to the petitioner, contrary to the remedies that he is entitled to plead under the Divorce Act, which in spite of its archaic grounds for divorce, is still the law applicable.

### **THE CROSS PETITION**

[148] The cross-petitioner/ respondent was the right person to petition for divorce in this matter but she did not do so. As a matter of fact, she

opposed the petition and filed a cross petition, which is in effect incompetent in law as it discloses no cause of action in divorce and it seems to me, to be an application for maintenance and custody of the three issues of their marriage, plus a claim for matrimonial property in case the court grants the cross respondent's petition for divorce. Her prayers in the said cross petition can only be granted in a proper petition for divorce, a remedy that she is not seeking for in her said cross petition and which she opposed by her evidence.

[149] In this cross petition, the petitioner has not petitioned or prayed for divorce and her evidence in opposition to the cross respondent's petition is outrightly against it. In her examination in chief, she stated that despite having occasional misunderstandings with the petitioner, she unconditionally still loves him as her husband and hopes that he will return home someday. In cross examination, she categorically stated as follows:

*"I filed a counter petition asking for maintenance, welfare of the children and other remedies granted after divorce. I don't want the divorce to take place. I did it as a procedure to fight the divorce since I do not want it decided in his favor."*

[150] The cross petition fails thus.

***Issue 2: Whether the parties have matrimonial property and if so, what proportion is each party entitled to.***

***Issue 3: Whether the parties are entitled to be given joint custody of the children and if not, who should be given custody of the children.***

***Issue 4: Who should provide maintenance for the children***

[151] Regarding the above issues, since the petition and cross petition have both failed, the determination of the above issues would be moot and irrelevant.

[152] However, this court is well aware that the dismissal of this matter will not automatically or immediately end the marital conflict between the parties, including the acrimony exhibited by the petitioner towards the respondent, as evidenced in his most recent email addressed to her, subsequent to the filing of his petition (**Exhibit D16**). One of the main conflicts exposed therein is the question of the petitioner's lack of access to their children. The petitioner's justification in that email, for his refusal to provide maintenance for the children, is that the respondent has denied him access to their children. The same issue was also raised by the petitioner in his evidence. The respondent did not contradict it. It is noteworthy that he refused to meet up with the respondent to discuss their children's welfare as per her request as exhibited in **Exhibit D15** when he was informed of their 1<sup>st</sup> child's medical diagnosis of juvenile diabetes, but did not follow up to establish what her condition was like.

[153] The respondent testified that the petitioner has not cared for their children in a while and that the petitioner had refused to pay for their first child's school fees, as evidenced by **Exhibit D14**, which is the email forwarded to her by the child's school stating that the petitioner had informed them that the fees invoice was wrongly placed. The petitioner confirmed the respondent's evidence, justifying his refusal on the ground that he was not given the child's school report for the year. The respondent further proved that she was paying school fees for their **Exhibit D13**. In his email dated 7<sup>th</sup> July 2020 (**Exhibit D1**), the petitioner said sadly, that he had nothing to do with the respondent, her children and her family. He explained in his evidence that he made that statement in anger but was still interested in the welfare of their children. **Exhibit P15** is evidence that the parties had struck an agreement on the welfare of their children and this court believes that they can still do so since they both profess love towards their children, their differences notwithstanding.

[154] Counsel for both parties submitted at length on the subjects of maintenance and custody of the parties' children. Courts are always mandated to address any question concerning the welfare of the child whenever it arises. **Section 29 of the Divorce Act** provides:

*"In suits for dissolution of marriage, or for nullity of marriage or for judicial separation, the court may at any stage of the proceedings, or after a decree absolute has been pronounced, make such order as it thinks fit, and may from time to time vary or discharge the orders, with respect to the custody, maintenance and education of the minor children of the marriage, or for placing them under the protection of the court".*

[155] The purpose of that section is to ensure that children are well catered for at all the stages of a troubled marriage. In this matter, the children's maintenance has been an issue from the time the petitioner deserted his home and started cohabiting with someone else. **Section 3 of the Children's Act** as amended provides that the welfare of the child shall be of paramount consideration whenever a court determines any question in respect to the upbringing of a child and under **Section 3 (3) of the Children Act**, in determining any question under **subsection (1)** , the court or any other person dealing with an issue concerning a child is inter alia enjoined to take into account the child's physical, emotional and educational needs; any harm that the child has suffered or is at risk of suffering; the capacity of the child's parents in meeting the needs of the child.

[156] The petitioner's evidence is that he had four other children whom he had sired out of wedlock and was supporting of two other children. In those circumstances, the parties' children who are still of a tender age should remain with the respondent as the best suited parent to care for them.

[157] The respondent is supporting her children on a salary of 8,000,000/=. She adduced two receipts of rent payment in **Exhibit**

**D12**, showing that she was paying one million, one hundred thousand shillings (1,100,000/=) as rent to Master Woods Ltd monthly. She further adduced evidence in **Exhibit D13**, which was proof of the money spent on the two younger children's education amounting to one million, one hundred forty thousand shillings (1,140,000/=) and one million, one hundred and sixty thousand shillings (1,360,000/=) per term respectively.

[158] Notably, the petitioner did not provide a statement of his earnings to the court. The court can only deduce from the fact that he is taking care of six other children, and occasionally pays school fees for the children of DW2, that he is financially stable. It is commendable but quite ironic that the petitioner provides for those children, but has neglected his primary responsibility of taking care of the issues of his marriage with the respondent. In light of the aforementioned, it is my considered opinion that the custody of the children of the parties remains with the respondent with whom the petitioner left them, until the parties agree otherwise, or until a competent court orders to the contrary.

[159] As far as maintenance for the children is concerned, each party shall in the meantime bear 50% of the cost of maintenance of the children including food, school fees, medical expenses, shelter and entertainment among other things.

[160] With that said, Section **84 (2) of the Children's Act** provides that where the child is in the custody of one parent, the other parent shall have reasonable access to the child. Also, **Article 34(1) of the Constitution of the Republic of Uganda** guarantees the right of children to know and be cared for by their parents. This position is repeated in **Section 6 (1) of Children's Act**, which provides that every parent or guardian shall have parental responsibility for his or her child. As long as the parties remain apart, as has happened since the petitioner deserted the respondent, the above provisions, entitle

the petitioner to access the children. He is allowed to visit them once every weekend, upon notice to the respondent, between 10:00 am in the morning and 6:00 pm in the evening.

***Issue 5 - What remedies are available to the parties***

[161] In light of the aforementioned, the other remedies prayed for fail as a result of the dismissal of the petition and the cross petition, except that:

- a) The respondent is granted custody of the children;
- b) The petitioner is granted visitation rights once every weekend between 10:00 am in the morning and 6:00 pm in the evening upon prior notice to the respondent;
- c) Both parties shall bear 50% of the cost of maintenance of the children, particularly, the costs of food, education, medical treatment, shelter and entertainment among other needs.

[162] About the costs prayed for by the parties, it is the law that costs follow the event and the successful party is entitled to costs, unless the court shall for good reason otherwise order ***(See Section 27 of the Civil Procedure Act)***. In the instant case, costs are awarded to the respondent in the petition.

[163] No order as to costs in the dismissed cross petition is made, as the purpose of filing it was to make prayers for the maintenance and custody of the three issues of the marriage, to claim for matrimonial property and for alimony, in the event that petitioner's petition for divorce succeeded.

[164] Any aggrieved party is entitled to appeal the court's decision within thirty (30) days of the order of this court.

I so order.



Susan Okalany

**JUDGE**  
**24/08/2021**