

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(FAMILY DIVISION)
DIVORCE CAUSE NO. 112 OF 2018

LILLIAN KATWESIGE PETITIONER

VERSUS

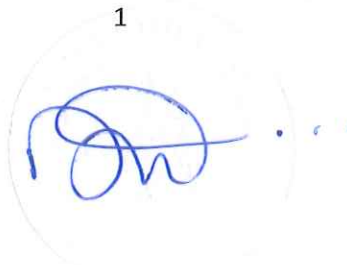
RAMAYUB K. SENTAM RESPONDENT

JUDGMENT

BEFORE: HON. JUSTICE ALICE KOMUHANGI KHAUKHA

Introduction

This judgment is in respect of a Divorce Petition filed in this Honorable court on 5th November 2018 by Lillian Katwesige (hereinafter referred to as “**the petitioner**”) against her husband Ramayub K. Sentam (hereinafter referred to as “**the respondent**”). The petitioner seeks for dissolution of the marriage between her and the respondent that was conducted at the Registry of Marriages in Kampala on the 23rd day of August 2006 on grounds of adultery and cruelty. The petitioner further seeks for sole custody of the children and alimony. She also seeks that properties comprised in Kyadondo Block 232 Plot 1983 and Plot 1000 at Kireka Banda, Ssabaddu should remain as family land and be transferred into the names of the children while properties comprised in Kyadondo Block 232 Plot 1486 at Kireka Banda, Ssabaddu, Leasehold Register Volume 477 Folio 25, together with the whole sanitary lane Plot No. 3 & 5, Block D, Bulopa and Motor Vehicle comprised in Toyota Corona, Reg. No. UAH 384J, Engine No. 5A-9434898, Silver Green, AT211-0030509 be transferred into the names of the petitioner and the respondent or in the alternative, without prejudice to the above, in the names of the children, costs of the petition and any other reliefs the Court may find just and equitable.



Representation

At the hearing of the petition, the petitioner was represented by Counsel Anthony Bazira while the respondent was neither in Court nor represented.

The petition

The petition was filed in this honorable court on 5th November 2018 and an amended petition was filed on 4th November 2020. The respondent did not file any response to the petition nor the amended petition despite the fact that he was served with both as per the affidavits of service filed on Court's record on 26th July 2019, 6th December 2021 and 9th March 2022.

When the matter first came up for hearing on 6th December 2021, Counsel for the petitioner prayed that leave be granted to the petitioner to proceed ex parte but the same was denied by court. Instead court directed Counsel for the petitioner to serve the respondent by substituted service using a Newspaper of wide readership. Court adjourned the matter to 10th March 2022.

On 10th March 2022 when the matter came up for hearing again, Counsel for the petitioner told Court that he had served the respondent via substituted service in the New Vision Newspaper of 25th December 2021 but the respondent had not yet responded to the summons. Counsel for the petitioner then prayed that court grants the petitioner judgment in default. Court granted the said prayer and entered default judgment and also set down the matter for formal proof.

Facts

The petitioner and the respondent got married vide a civil marriage and the same was conducted at the Registry of Marriages in Kampala on the 23rd day of August 2006. The petitioner and the respondent resided in the United Kingdom (UK) during the subsistence

of the said marriage and four issues namely: Zhoran Hadija Katwesigye Kisambira (aged twenty), Rashma Ayub Sentamu Kisambira (aged thirteen), Asiah Nakaima Kisambira (aged ten) and Riaz Haroon Kisambira (aged six) were begotten. However, during their time of cohabitation as husband and wife, the respondent is said to have become cruel as he failed to look after the petitioner and the children, there were repeated quarrels and abuses from the respondent whenever he was rebuked about his adulterous acts. He refused to pay the children's school fees, made verbal threats towards the petitioner's mother in-law and caused injury to some of the petitioner's relatives. He also failed and/or refused to get involved in the welfare of the children. The respondent is also said to have committed adultery with various women and has a child of about 4 to 6 six years out of wedlock.

It is against that background that this petition was filed in this Honourable Court.

Issues

1. *Whether there exist grounds for divorce; and*
2. *What remedies are available to the parties?*

Resolution of issues

Issue 1: *Whether there exist grounds for divorce.*

Section 4 of the Divorce Act provides the grounds under which a husband and a wife can petition for divorce. However, our courts have pronounced themselves on the unconstitutionality of those grounds in the case of *Uganda Association of Women Lawyers and Others Versus Attorney General Constitutional Petition No. 2 of 2003*. In this case, it was held that Section 4 of the Divorce Act is null and void in as far as it required women to prove many grounds for divorce as opposed to men who were required to prove only one. The court considered this as discrimination on the basis of sex and in violation of the equality provisions under the 1995 constitution of the Republic of Uganda. It was the view



of the learned Justices that all grounds of divorce mentioned in Section 4 (1) and (2) of the Divorce Act are available to both parties to the marriage.

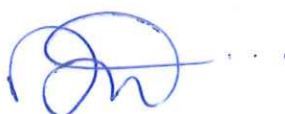
Counsel for the petitioner in his submissions raised three grounds for dissolution of the marriage between the parties to wit; cruelty, adultery and desertion.

On the ground of cruelty, Counsel for the petitioner reiterated the particulars of cruelty stated in the petition to wit: that the respondent failed to look after the petitioner and the children, there were repeated quarrels and abuses from the respondent whenever he was rebuked about his adulterous acts. He also refused to pay the children's school fees, made verbal threats towards the petitioner's mother in-law and caused injury to some of the petitioner's relatives. He also failed and/or refused to get involved in the welfare of the children. The said particulars of cruelty were also stated by the petitioner in her evidence. Counsel then submitted that the petitioner has proved the ground of cruelty to the satisfactory standard since the respondent has in various ways acted in a manner that shows no respect to the petitioner and that the marriage relationship is beyond reconciliation and repair.

In the case of *Namukasa Joweria Versus Kakondere Living Divorce Cause No. 30 of 2010* (cited by Counsel for the petitioner in his submissions), where the case of *Habyarimana Versus Habyarimana [1980] HCB 139* was cited with approval, it was held that:

"there is no definition of cruelty in the Divorce Act but case law has established that no conduct can amount to cruelty unless it has the effect of producing actual or apprehended injury to the petitioner's physical and mental health. That there must be danger to life, limb or health, bodily or mental or reasonable apprehension of it to constitute cruelty." [Emphasis Mine]

In light of the above case, I find that the ground of cruelty has been satisfactorily proved by the petitioner. The conduct of the respondent as already highlighted in the petitioner's pleadings and evidence and also reiterated in the submissions of Counsel for the petitioner



can be categorized as conduct that amounts to emotional and/or psychological torture and would cause danger to the petitioner's mental health.

On the ground of adultery, the petitioner in her evidence stated that the respondent on several occasions committed acts of adultery with various women and has a child of about 4 to 6 years and the same was reiterated by Counsel for the petitioner in his submissions.

In the case of *Dr. Specioza Wandira Naigaga Kazibwe Versus Eng. Charles Nsubuga Kazibwe Divorce Cause No. 3 of 2003* (cited by Counsel for the petitioner), it was held that adultery can be proved by the petitioner adducing direct or circumstantial evidence to prove it [Emphasis Mine]. PE7 of the petitioner's trial bundle contains pictures said to be of the respondent with another woman together with a child and the petitioner stated that the respondent committed adultery with that woman and the child was born. In absence of any rebuttal from the respondent, I believe the petitioner's evidence to be true.

The other ground of divorce that Counsel for the petitioner raised is that of desertion. However, I would like to note that the ground of desertion does not suffice in this instance because the two years which are required by the law under section 4 of the Divorce Act, Cap. 249 to establish its existence have not been sufficiently proved by the petitioner. All the petitioner states in her evidence is that the respondent moved back to Uganda in 2020 and stopped getting involved in family affairs and raising the children. That all attempts to get him involved were in vain. The petitioner does not state when exactly in 2020 the respondent abandoned his home. As such, Court is unable to calculate how much time the respondent has been away. I find that the ground of desertion has not been sufficiently proved by the petitioner.

Therefore, issue 1 is resolved in the affirmative to the extent that only two grounds that is, cruelty and adultery have been sufficiently proved by the petitioner.



Issue 2: What remedies are available to the parties?

Apart from dissolution of the marriage, the petitioner prayed for orders that she is granted custody of the children, the respondent maintains the children, she is granted alimony, that the properties comprised in Kyadondo Block 232 Plot 1983 and Plot 1000 at Kireka Banda, Ssabaddu should remain as family land and be transferred into the names of the children. She further prayed that properties comprised in Kyadondo Block 232 Plot 1486 at Kireka Banda, Ssabaddu, Leasehold Register Volume 477 Folio 25, together with the whole sanitary lane Plot No. 3 & 5, Block D, Bulopa and Motor Vehicle comprised in Toyota Corona, Reg. No. UAH 384J, Engine No. 5A-9434898, Silver Green, AT211-0030509 be transferred into the names of the petitioner and the respondent or in the alternative, without prejudice to the above, in the names of the children. She also prayed for costs of the petition and any other reliefs the Court may find just and equitable.

On the issue custody of the children, Counsel for the petitioner relied on section 3 of the Children Act Cap 59 and the case of *Re M (an infant) Supreme Court Civil Appeal 22/1994* and submitted that the welfare of the children should be considered. He further stated that the respondent abandoned his family and has not followed up on the children's affairs for two years. As such, he prayed that the respondent is granted visitation rights and accessibility to the children.

The finding on who should have custody of the children shall only be made in regard to three children that is, Rashma Ayub Sentamu Kisambira (aged thirteen), Asiah Nakaima Kisambira (aged ten) and Riaz Haroon Kisambira (aged six). I shall not consider Zhoran Hadija Katwesigye Kisambira because is aged twenty and is considered as an adult as per the laws in Uganda. This means that she has attained majority and that she is capable of making her own choices.



Article 31 (4) of the Constitution of the Republic of Uganda provides that it is the right and duty of parents to care for and bring up their children. [Emphasis Mine] Also in the case of *Otto Methodius Pacific Versus Edyline Sabrina Pacific, Civil Appeal No. 88 of 2013* the welfare principle of the children was emphasized and court was in favour of joint custody of the children as opposed to sole custody where none of the parents is likely to cause harm to the children.

Considering the circumstances herein, I find that the petitioner has not provided sufficient evidence as to why she wants sole custody of the children. Considering the welfare principle, I find that the children need to grow up with both parents in their lives. The children need a father as they grow up especially at this crucial stage of their lives. The children are aged thirteen, ten and six years respectively according to their Birth Certificates marked as PE4, PE5 and PE6 on the plaintiff's trial bundle.

In the premises, I decline to grant the sole custody as prayed for by the petitioner and instead grant joint custody of the children.

The petitioner also prayed that the respondent pays maintenance for the children. Counsel for the petitioner relied on section 29 of the Divorce Act, Cap. 249 which provides that in suits for dissolution of a marriage...the court may...make such order as...to the...maintenance...of the minor children of the marriage... to pray for the same. [Emphasis Mine] Since I have already granted joint custody of the children, there shall be shared maintenance of the children but specifically, the respondent shall pay for the education and medication of the children while the petitioner shall maintain the children's general welfare such as providing them with clothing and any other necessary. Shelter and food shall be provided for by whichever party is in custody of the children. It was the petitioner's testimony that she is a mental health nurse which indicates that she is gainfully employed.

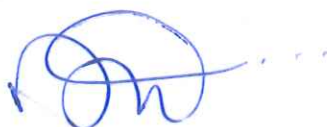


The petitioner too prayed that she is granted alimony. Counsel for the petitioner relied on section 24 (1) of the Divorce Act, Cap. 249 which provides that:

“On a decree absolute declaring a marriage to be dissolved, ...the court may order the husband to secure to the wife such sum money as, having regard to her fortune, if any, to the ability of the husband, and the conduct of the parties, it thinks reasonable.” [Emphasis Mine]

I would like to note that a decree absolute declaring the marriage to be dissolved has not yet been entered for the petitioner to be granted her prayer for alimony as per the above cited law. Also, as I noted above, the petitioner is gainfully employed as a mental health nurse and it would not be fair to impose payment of alimony upon the respondent when the petitioner can ably take care of herself. Besides, no evidence has been adduced regarding the ability of the respondent to pay alimony. I also find this provision of the law discriminatory in the sense that it is the husband that has to pay alimony to the wife. What happens in situations where the petitioner in a divorce case is a man and/or the husband? I believe that justice should be accorded to all persons equally. For the said reasons, I decline to grant the petitioner's prayer for alimony.

The petitioner further prayed that the properties comprised in Kyadondo Block 232 Plot 1983 and Plot 1000 at Kireka Banda, Ssabaddu should remain as family land and be transferred into the names of the children. She prayed that the properties comprised in Kyadondo Block 232 Plot 1486 at Kireka Banda, Ssabaddu, Leasehold Register Volume 477 Folio 25, together with the whole sanitary lane Plot No. 3 & 5, Block D, Bulopa and Motor Vehicle comprised in Toyota Corona, Reg. No. UAH 384J, Engine No. 5A-9434898, Silver Green, AT211-0030509 be transferred into the names of the petitioner and the respondent or in the alternative, without prejudice to the above, in the names of the children.



Counsel for the petitioner relying on the case of *Rwabinumi Versus Bahimbisomwe Civil Appeal No. 10 of 2009* which cited with approval the authority of *Kagga Versus Kagga Divorce Cause No. 11 of 2005*, submitted that the petitioner contributed to the properties comprised in Kyadondo Block 232 Plot 1983 and Plot 1000 at Kireka Banda and that the family derives sustenance from the said properties. That it is also where the petitioner and the children reside whenever they come back to the country. More so, that the respondent has since neglected maintenance of these properties and all repairs and house maintenance costs have always been footed by the petitioner.

For the properties comprised in Kyadondo Block 232 Plot 1486 at Kireka Banda, Ssabaddu, Leasehold Register Volume 477 Folio 25, together with the whole sanitary lane Plot No. 3 & 5, Block D, Bulopa and Motor Vehicle comprised in Toyota Corona, Reg. No. UAH 384J, Engine No. 5A-9434898, Silver Green, AT211-0030509, Counsel in his submissions stated that the petitioner prays that out of fairness, the respondent retains the said property.

In the case of *Rwabinumi Versus Bahimbisomwe Civil Appeal No. 10 of 2009* (as cited by counsel for the petitioner), which cited with approval the approach adopted by Bbosa J (as she then was) in *Muwanga Versus Kintu High Court Divorce Appeal No. 135 of 1997 (unreported)*. Justice Bbosa observed thus:

“Matrimonial property is understood differently by different people. There is always property which the couple choose to call home. There may be property which may be acquired separately by each spouse before or after marriage. Then there is property which a husband may hold in trust for the clan. Each of these should in my view be considered differently. The property to which each spouse should be entitled is that property which the parties choose to call home and which they jointly contribute... what amounts to contribution to earn a spouse a share in the property may be direct and monetary or indirect and non-monetary.”

In the same case, Justice Mwangusya observed that:

“Our courts have established a principle which recognizes each spouse’s contribution to acquisition of property and this contribution is monetary or indirect, where a spouse offers domestic services...when distributing the property of a divorced couple, it is immaterial that each one of the spouses was not



financially endowed as the other as this case clearly showed that while the first respondent was the financial muscle behind all the wealth they acquired, the contribution of the petitioner is no less important than that made by the respondent.”

Considering the evidence on court's record and in agreement with the above cited decision, the petitioner shall remain in possession of the properties comprised in Kyadondo Block 232 Plot 1983 and Plot 1000 at Kireka Banda, Ssabaddu and the same shall be registered in the names of the children since the family derives sustenance from them, the said properties are what the petitioner and the children regard as home, it is their residence whenever they are in Uganda and also because the petitioner has been maintaining the said properties.

The properties comprised in Kyadondo Block 232 Plot 1486 at Kireka Banda, Ssabaddu, Leasehold Register Volume 477 Folio 25, together with the whole sanitary lane Plot No. 3 & 5, Block D, Bulopa and Motor Vehicle comprised in Toyota Corona, Reg. No. UAH 384J, Engine No. 5A-9434898, Silver Green, AT211-0030509, shall be retained by the respondent as per the petitioner's prayer.

Counsel for the petitioner abandoned the prayer for costs. As such, no costs have been awarded to either party in this petition.

In conclusion therefore, the following Orders are made:

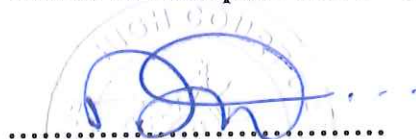
1. that a Decree Nisi dissolving the civil marriage between Lillian Katwesige and Ramayub K. Sentam that was contracted on 23rd August 2006 at the Registry of Marriages in Kampala is hereby entered;
2. that there shall be joint custody of the children that is, Rashma Ayub Sentamu Kisambira, Asiah Nakaima Kisambira and Riaz Haroon Kisambira by the parties

until they attain majority age according to the law of Uganda. Zhoran Hadija Katwesigye Kisambira is intentionally excluded from this Order because she is an adult according to the laws of Uganda;

3. that both parties shall maintain the children. The petitioner shall maintain the children in terms of general welfare such as; providing clothing and any other necessities for the time that they are in her custody while the respondent shall maintain the children in terms of paying for their education and medication. Whichever party shall have custody of the children shall provide them with shelter and food;
4. that no alimony has been awarded to the petitioner;
5. that the properties comprised in Kyadondo Block 232 Plot 1983 and Plot 1000 at Kireka Banda, Ssabaddu shall be used by the petitioner and the children for residential purposes whenever they are in Uganda and the same shall be registered in the names of the children;
6. That the properties comprised in Kyadondo Block 232 Plot 1486 at Kireka Banda, Ssabaddu, Leasehold Register Volume 477 Folio 25, together with the whole sanitary lane Plot No. 3 & 5, Block D, Bulopa and Motor Vehicle comprised in Toyota Corona, Reg. No. UAH 384J, Engine No. 5A-9434898, Silver Green, AT211-0030509, shall be retained by the respondent; and
7. that no costs are awarded to either party.

I so order.

Dated at Kampala this 8th day of September 2022.



Alice Komuhangi Khaukha

JUDGE

8/09/2022