

**DIVORCE CAUSE NO.12 OF 2023**

## VERSUS

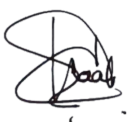
**JUDGMENT BEFORE: HON. LADY JUSTICE CELIA NAGAWA**

- a) The marriage between the Petitioner and the Respondent be dissolved.
- b) A Decrees Nisi be granted in favor of the Petitioner.
- c) The Company, 7 Days International Limited to which the parties are shareholders remain in the control of both parties as per the Memorandum and Articles of Association.
- d) In case of death of any of the parties herein, their Company, 7 Days International Limited meets all the funeral expenses and the parties share shall be owned by the beneficiaries to the party's estate.
- e) Upon the terminal illness of any of the parties herein, the Company, 7 Days International Limited should meet all the expenses.

- f) the Petitioner proposes that the properties between the Respondent and Petitioner be divided as follows;

**A. Properties to be taken by the Petitioner:**

- i) House No. 1001, Building No.2 Yunding Yinxiang Compound, Bagui Green City No. 31, Zhuangjia Avenue, Jiangnan District, Nanning, Guangxi China measuring 130.71 square meters.
- ii) Room No. 901, Building No.2, Yunding Yinxiang Compound, Bagui Green City No. 31, Zhuangjia Avenue, Jiangnan District, Nanning, Guangxi China measuring 130.71 square meters.
- iii) Volkswagen Passat, Registration Number UBA 210Q in the names of Senyonyi John Mbaziira.
- iv) 50% each with Senyonyi John Mbaziira in the land at Ngobe, Bunamwaya, Block No. 256 Plot No. 9515 measuring approximately 0.4690 Hectares registered in the names of Senyonyi John Mbaziira where the land shall later on be subdivided.
- v) Control of 50% each with Senyonyi John Mbaziira land situate at Rubaga comprised in Block No. 17 Plot No.1151 registered names of Justine Nakato and Block No. 17 Plot 1215 and this share emanates from the shareholding percentage the Petitioner holds in the Company, 7 Days International Limited, as the land is owned by the company.
- vi) Enjoy quiet and exclusive possession, of 99 years lease on automatic renewal basis on land and house situate at



Block 244 Plot 5570 which house is registered in the name of Senyonyi John Mbaziira.

**B. Properties to be taken by the Respondent:**

- i) BMW X5, Registration Number UBA 528K registered in the names of Senyonyi John Mbaziira.
- ii) Volkswagen Golf Variant, Registration Number UBG 840S registered in the names of Senyonyi John Mbaziira
- iii) Toyota Dyna Truck, Registration Number UBB 766X registered in the names of Senyonyi John Mbaziira
- iv) Land at Kisigula Wakiso District Block 256 Plot 7544 registered in the names of Joweria Nakalema
- v) Land and house at Kirinyabigo, Wakiso District, Block 264 Plot 1300 in the names of Frank Sande Kimera
- vi) Land at Korolo, Mpigi District, Block 113 Plot 97 registered in the names of Senyonyi John Mbaziira.
- vii) Land at Mutundwe Block 34 Plot 398 and Block 34 Plot 399 both registered in the names of Senyonyi John Mbaziira
- viii) Land and house at Mutundwe Block 33 Plot 776 registered in the names of Kaggwa Moses Mubiru
- ix) Land and houses at Kisigula, Bunamwaya, Block 265 Plot 5906 registered in the names of Senyonyi John Mbaziira

**C. Properties to be transferred in the names of the company, 7 Days International Limited, in which both parties have shares:**

- i) Isuzu Elf UAV 704F
- ii) Isuzu Elf UAX 823P



iii) Toyota Dyna UAZ 167R

iv) Toyota Spacio UBD 114H

g) Costs of the Petition.

h) Any other remedy that this Honorable Court deems fit.

1.2 This Petition was verified by the Petitioner on 30<sup>th</sup> January, 2023 before the Commissioner for Oaths.

## **2.0. Representation and Hearing.**

2.1 The Petitioner was represented by Mr. Julius Ibembe of BIS Associated Advocates & Legal Consultants, Kampala.

2.1.1. On 28<sup>th</sup> August, 2023 when this matter came up for hearing, this court directed that the Respondent be served by substituted service following an application by the petitioner under Order 5 rule 18(1) of the Civil Procedure Rules S.I 71-1. See **Barlmart Logistics Ltd Versus Scarce Commodities Ltd (Miscellaneous Application 274 of 2016 [2019] UGHCCD 110 (17 January 2019))**.

2.1.2. Summons to file an Answer to the Petition was advertised in the Daily Monitor Newspaper on 13<sup>th</sup> September, 2023 at Page 35 and also displayed on the Court notice board on 14<sup>th</sup> September, 2023. The above notwithstanding, the Respondent did not file an Answer to the Petition. Counsel for the Petitioner, prayed that the matter proceeds *ex parte* under Order 9 rule 10 of the Civil Procedure Rules, Statutory Instrument 71-1.

## **2.2. Background of the Petition.**

2.2.1. The Petitioner and the Respondent were lawfully married in The People's Republic of China and their marriage officially registered on

22<sup>nd</sup> May, 2006 vide Certificate No. (2006) No. 127. Immediately after celebration of their marriage, the couple returned to Uganda where they have been domiciled, residing at Kisugula, Mutundwe.

2.2.2. The Petition is premised on the grounds of Adultery, Cruelty and Desertion wherein the Petitioner contends that since the solemnization of their marriage, the Respondent has been involved in consecutive acts of Adultery with various women thus exposing the Petitioner to the danger of acquiring sexually transmitted diseases and infections.

2.2.3. The Petitioner contends that the Respondent has been a drunkard, abusive, cruel to her by denying her inalienable conjugal rights and has since abandoned and/or deserted her. She believes that their marriage has irretrievably broken down without any chance of reconciliation. They have no issues to the marriage much as they acquired various properties. She prays for dissolution of the marriage.

### **2.3. Scheduling.**

2.3.1. On 3<sup>rd</sup> October, 2023, the Petitioner filed her Trial Bundle, Witness Statement and Petitioner's Scheduling Memorandum. The matter was scheduled and heard on 4<sup>th</sup> October, 2023. During scheduling, the Petitioner proved that she was domiciled in Uganda at the time she presented this Petition as is required under **Section 1 (a) of the Divorce Act Cap. 249.**

### **3.0. Issues for Court's Determination.**

1. Whether there was a valid marriage between the Petitioner and the Respondent?
2. Whether there are any grounds for Divorce between the parties?



3. Whether the properties can be shared between the parties?
4. What remedies are available to the parties?

### **3.1. Petitioner's Evidence.**

1. A copy of the translation of the Marriage Certificate of the Petitioner and the Respondent marked **"PEX 1"**.
2. A copy of the Marriage Certificate of the Petitioner and the Respondent marked **"PEX 2"**.
3. Photographs of celebration of customary marriage between the Respondent and another woman marked **"PEX 3"**.
4. A copy of the Certificate of Incorporation of 7 Days International Limited and Company Form 7 marked **"PEX 4"**.
5. A copy of Certificate of Title for land comprised in Kyadondo Block 244 Plot 5570 land at Kisugu measuring 0.052 Hectares registered in the name of Ssenyonyi John Mbaziira on 15<sup>th</sup> June, 2022 vide Instrument No. KCCA-00093030 marked **"PEX 5"**.
6. A copy of the Certificate of Title for land comprised in Leasehold Register Volume KCCA562 Folio 22 Block 244 Plot 5570 land at Kisugu, measuring approximately 0.0520 Hectares registered in the name of Pang Xiao Yan on 29<sup>th</sup> June, 2022 vide instrument number KCCA-00093625 marked **"PEX 6"**.
7. A copy of the Certificate of Title for land comprised in Kyadondo Block 265 Plot 9084 land at Bunamwaya, Ssabagabo, measuring approximately 0.040 Hectares registered in the name of Kagolo Joseph on 22<sup>nd</sup> September, 2006 vide instrument number KLA309185 marked **"PEX 7"**.



- 8.A copy of the Certificate of Title for land comprised in Kibuga Block 17 Plot 1151 land at Rubaga measuring approximately 0.047 Hectares registered in the name of Nakato Justine in 2006 vide instrument number KLA294212 together with a land sale and purchase agreement for land comprised in Kibuga Block 17 Plots 1151 and 1215 land at Rubaga, dated 11<sup>th</sup> April, 2019 in the name of both the Petitioner and the Respondent and a Centenary Bank Real Time Gross Settlement (RTGS) Transfer Form vide Serial Number 044111 by the Petitioner marked **“PEX 8”**.
- 9.A copy of the Certificate of Title for land comprised in Private Mailo Kibuga Block 34 Plot 399 land at Mutundwe, measuring approximately 0.08 Hectares registered in the name of Senyonyi John Mbaziira vide instrument number KCCA-00026531 marked **“PEX 9”**.
- 10.A copy of the Certificate of Title for land comprised in Kibuga Block 34 Plot 398 land at Mutundwe measuring approximately 0.10 Hectares registered in the name of Senyonyi John Mbaziira vide instrument number KCCA-00026530 marked **“PEX 10”**.
- 11.A copy of the Certificate of Title for land comprised in Private Mailo Kyadondo Block 265 Plot 9515 land at Bunamwaya, Wakiso District measuring approximately 0.4690 Hectares in the name of Senyonyi John Mbaziira registered on 5<sup>th</sup> March, 2019 vide instrument number WAK-00210445 marked **“PEX 11”**.
- 12.A copy of the Certificate of Title for land comprised in Block 113 Plot 97 land at Korolo, Mpigi District measuring approximately 1.4180 Hectares registered in the name of Senyonyi John



Mbaziira registered on 4<sup>th</sup> February 2015 vide instrument number KLA00003758 marked **“PEX 12”**.

- 13.The original copy of the translation of house ownership certificate for the residential house comprised in No.1001, Building No. 2, Yunding Impression, Bagui Green City, No. 31, Zhuangjin Avenue, Jiangnan District individually owned by Pang Xiaoyan together with the copy of the house ownership documents in the Chinese dialect marked **“PEX 13”**.
- 14.The original copy of the translation of house ownership certificate for the residential house comprised in No.901, Building No.2, Yunding Impression, Bagui Green City, No.31, Zhuangjin Avenue, Jiangnan District co-owned by Pang Xiao Yan and Senyonyi John Mbaziira together with the copy of the house ownership documents in the Chinese dialect marked **“PEX 14”**.
- 15.A copy of the motor vehicle log book vide Registration Number: UBA 528K, Make: BMW, Chassis Number: WBAFB32090LH60638 registered in the name of Mr. John Senyonyi Mbaziira marked **“PEX 15”**.
- 16.A copy of the motor vehicle log book vide Registration Number: UAX823P, Make: Isuzu, Model: Elf Truck, Chassis Number: NKR55E7112018 registered in the name of Mr. John Senyonyi Mbaziira marked **“PEX 16”**.
- 17.A copy of the motor vehicle log book vide Registration Number: UBA210Q, Make: Volkswagen, Model: Passat GF-3BAZM, Chassis Number: WVVZZZ3BZ4E035952 registered in the name of Mr. John Senyonyi Mbaziira marked **“PEX 17”**.





18.A copy of the motor vehicle log book vide Registration Number: UAZ167R, Make: Toyota, Model: Dyna (LY61), Chassis Number: LY610039614 registered in the name of Mr. John Senyonyi Mbaziira marked **“PEX 18”**.

19.A copy of the motor vehicle log book vide Registration Number: UAV704F, Make: Isuzu, Model: Elf NKR66E, Chassis Number: 4HF15791017 registered in the name of Mr. John Senyonyi Mbaziira marked **“PEX 19”**.

#### **4.0. Hearing of Petition**

4.1. On 4<sup>th</sup> October, 2023, this Petition came up for hearing, the Petitioner adduced her evidence vide a Witness Statement. After taking oath, the Petitioner’s Witness Statement was admitted as her evidence in Examination-in-Chief and marked “PW1”. The Petitioner was cross-examined on the said Witness Statement by Court. The Petitioner never called any other witnesses other than herself. The Petitioner relied on the above listed documents in proof of her case.

#### **5.0. Burden of Proof.**

5.1. In all civil matters like the present Petition, he who alleges bears the burden to prove his/her case on a balance of probabilities. The Petitioner in this case therefore has the burden to prove the facts alleged by her in the Petition by virtue of **Sections 101, 102 and 103 of the Evidence Act, Cap.6.**

5.1.1. **Section 101 of the Evidence Act, Cap.6** provides that; *“Whoever desires any Court to give judgment as to any legal right or liability,*



*dependent on the existence of the facts which he or she asserts must prove that those facts exist”.*

## **5.2. Written Submissions.**

5.2.1. On 17<sup>th</sup> November, 2023, Counsel for the Petitioner filed written submissions in resolution of this Petition. This Honorable Court has perused, analyzed and considered the written submissions submitted by the Petitioner in the determination of this Petition.

## **5.3. ISSUE ONE**

**Whether there was a valid marriage between the Petitioner and the Respondent?**


5.3.1. The Petitioner presented her Marriage Certificate issued by the People's Republic of China on 22<sup>nd</sup> May, 2006 vide Certificate No. (2006) No. 127 and its translation marked as '**PEX 2**' and '**PEX 1**' respectively as evidence of the solemnization of the marriage.

5.3.2. Proof of marriage is by a marriage certificate, proof of a ceremony, followed by cohabitation of parties. *See the case of **Kintu Muwanga versus Myllious G. Kintu Divorce Appeal No. 135 of 1997***. This court therefore finds that a valid marriage exists between the Petitioner and the Respondent.

## **5.4. ISSUE TWO:**

**Whether there are any grounds for Divorce between the parties?**

**5.4.1. Section 4 of the Divorce Act Cap 249** set out the grounds for Divorce. However, this Section of the Divorce Act has since been revised and replaced by **Section 18 of the Law Revision**



**(Miscellaneous Amendments) Act, 2023.** Prior to this revision, the Divorce Act Section 4 provided that a husband could present a petition for divorce on only one ground which was adultery, while a wife could only present a divorce petition on the ground of adultery coupled with another ground such cruelty, desertion, bigamy, rape and others. The Constitutional Court in **Uganda Association of Women Lawyers (FIDA) & 5 Others Vs Attorney General Constitutional Petition No 2/2002 (unreported) Section 4 (2) of the Divorce Act, Cap. 249** found this to be unconstitutional and held that the different treatment of spouses was unconstitutional on account of discrimination. It ordered that both spouses would henceforth be entitled to the same grounds for divorce.

**5.4.2. Section 18 of the Law Revision (Miscellaneous Amendments) Act, 2023** provides that;

- (1) A husband or wife may apply by petition to the court for the dissolution of the marriage on the ground that since the solemnisation of the marriage, his wife or her husband—
  - a) Has been guilty of adultery.
  - b) Has changed his or her profession of Christianity for the profession of some other religion, and gone through a form of marriage with another man or woman.
  - c) Has been guilty of bigamy
  - d) Has been guilty of rape, sodomy or bestiality.
  - e) has been guilty of cruelty; or
  - f) Has been guilty of desertion, without reasonable excuse, for two years or upwards.



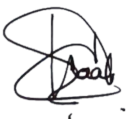
5.4.3. In this case, the Petitioner relied on the grounds of Cruelty, Desertion and Adultery. The court will handle each ground separately.

### **5.5. Adultery.**

5.1. Adultery is a voluntary act of sexual intercourse between someone who is married and a person of the opposite sex who is not their spouse. Justice Ntagoba's judgement, **George Nyakairu Vs Rose Nyakairu (1979) HCB 261** defines adultery.

5.2. The Divorce Act provides the grounds upon which the divorce of the parties to a matrimonial union may be considered and determined. Prior to **Uganda Association of Women Lawyers (FIDA) & 5 Others Versus Attorney General, Constitutional Petition No. 2 of 2002 (unreported)**, Section 4 (2) of the Divorce Act, Cap. 249 governed the grounds upon which a Divorce Petition would be presented. The husband could only present a Petition for divorce on one ground which was adultery and the wife could only present a Divorce Petition on the ground of adultery coupled with another ground such cruelty, desertion, bigamy, rape and others. The different treatment of the spouses to a marriage in Divorce Proceedings was challenged in the Constitutional Court as being unconstitutional and the Constitutional Court held that the different treatment of spouses was unconstitutional on account of discrimination. It ordered that both spouses would henceforth be entitled to the same grounds for Divorce as set out in Section 4 of the Divorce Act.

5.3. Therefore, following **Uganda Association of Women Lawyers (FIDA) & 5 Others Versus Attorney General, Constitutional Petition No. 2 of 2002**, it is sufficient for either spouse to allege one ground for



Divorce as set out in Section 4 of the Divorce Act for a Petition or Cross Petition to succeed.

- 5.4. **Section 8 of the Divorce Act Cap. 249** provides for the circumstances when a Petition may be successful or not. It states;

**When Petition shall be granted**

*(1) If the Court is satisfied that the Petitioner's case has been proved, and does not find that the Petitioner has been accessory to or has connived at the going through of the form of marriage or the adultery, or has connived at or condoned it, or that the Petition is presented or prosecuted in collusion, the court shall pronounce a decree nisi for the dissolution of the marriage.*

*(2) 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 willfully separated himself or herself from the Respondent before the adultery complained of, and without reasonable excuse, or of such willful neglect of or misconduct towards the Respondent as has conduced the adultery.*

- 5.5. There are three elements to be satisfied for a successful adultery ground in a Petition namely; the Respondent has committed adultery, the Petitioner must find it intolerable to live with the Respondent; and the Parties must have separated within six (6) months of the Petitioner finding out about the adultery.



5.6. The Petitioner contended in paragraphs 9 and 10 of her Petition that the Respondent has been involved in several acts of adultery with various women, some known and others unknown to her thus exposing the Petitioner to the dangers of acquiring sexually transmitted diseases and infections.

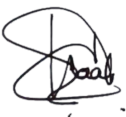
5.7. During cross-examination, the Petitioner stated that it was intolerable for her to live with the Respondent who she said was cheating on her and bringing women to their home. The Petitioner testified that the Respondent went ahead and conducted an introduction ceremony with another woman during the subsistence of their marriage. The Petitioner adduced photographic evidence marked as “**PEX 3**” of the Respondent getting married to another woman during the subsistence of their marriage. As a result of the Respondent’s adultery, he sired a daughter aged 3½ years old born to a lady called Joy.

5.8. In the case of **Kironde Versus Kironde & Another (Civil Divorce Cause No. 6 of 2001) [2002] UGHCFD 2**, Justice Kagaba stated that adultery can be proved by a party adducing evidence to prove the same or by the adulterer admitting the fact of adultery or by circumstantial evidence.

5.9. According to the evidence adduced by the Petitioner, this Court therefore finds that the ground of adultery has satisfactorily been proved to this Court.

#### **6.0. Cruelty.**

6.1.1. Cruelty was defined in the case of **Habyarimana V Habyarimana (1980) HCB 139**, to mean any conduct that produces actual or



apprehended injury to physical or mental health or probably injury. Cruelty may be mental and it may include injuries, reproaches, complaints, accusations, taunts, denial of conjugal rights among others.

6.1.2. Matrimonial cruelty may be of unfounded variety, which can be subtle or brutal. It may be in form of words, gestures or by mere silence, violent or nonviolent. Acts amounting to cruelty vary as widely as the reasons that cause unhappy, marriages. Therefore, there cannot be any comprehensive list of acts amounting to cruelty. “Politics of putting Asunder by Dr. Maria Nasali (Ed) at page 116.

6.1.3. There is no clearer instance of matrimonial cruelty than domestic violence. The Petitioner contended under paragraph 11 of the Petition that the Respondent has denied the Petitioner her inalienable conjugal rights. During cross-examination, the Petitioner stated that she has been separated from the Respondent since the year 2015. She moved away from the Respondent because it was difficult for her to tolerate the Respondent as he was cheating on her, brought several women in their house and was a drunkard. The Petitioner further stated that when the Respondent got drunk he was so abusive towards her. The Petitioner testified that the Respondent has been cheating on her since the beginning of their marriage and he is not repentant.

6.1.4. The Petitioner cannot reasonably be expected to continue to live in this environment as this goes beyond the ordinary wear and tear of married life.

6.1.5. The Respondent's actions amount to behavior that this court finds to be "grave and weighty" so as to come to the conclusion that the Petitioner cannot be reasonably expected to live with the respondent.



6.1.6. The ground of cruelty has also been proved by the Petitioner.

6.2. **Desertion.**

6.2.1. Desertion is the unjustifiable withdrawal from cohabitation, without the consent of remaining spouse and with intent of being separated permanently. The elements of desertion include, a cessation of cohabitation, the lapse of a statutory period, an intention to abandon, a lack of consent from the abandoned spouse and a lack of spousal misconduct that might justify the abandonment.

6.2.2. The Petitioner testified that after their marriage ceremony, they lived together until sometime 2015. **Section 18 (1) (f) of the Law Revision (Miscellaneous Amendments) Act, 2023** provides that a husband or wife may petition the court for a divorce where their spouse has been guilty of desertion, without reasonable excuse, for two years or upwards. In this case, the two year statutory period has been fulfilled.

6.2.3. In the case of **Perry Versus Perry [1952] 1 ALL ER 1075**, it was held that desertion does not necessarily mean and constitute withdrawal from a place, but constitutes withdrawal from a state of things.

6.2.4. In the case of **Kayhul Versus Kayhul (Divorce Cause No. 133 of 2016) (2020) UGHCFD 7 (3 July 2020)**, the Court held that “Desertion occurs where the spouse leaves the matrimonial home with an intention not to return or when parties still stay together in the same house/room but one spouse has withdrawn for the other and this continues for a period of time, two years or more”.

6.2.5. In the instant case, the Petitioner contends in paragraph 14 of the Petition that the Respondent has since abandoned and/or deserted the Petitioner and he currently stays in places not known to the Petitioner.





- 6.2.6. During cross examination, the Petitioner stated they have lived apart since the year 2015 and during that time, the Respondent got married to another woman in a customary ceremony. She adduced photographs of the said customary ceremony. The Respondent has equally begotten a daughter aged 3 ½ years old with another woman identified as Joy.
- 6.2.7. The Petitioner and the Respondent have lived apart for eight (8) years and there is no justification as to why the Respondent abandoned the Petitioner and even engaged into another relationship (marriage).
- 6.2.8. In the premises, this Court therefore finds that the Petitioner has proved on a balance of probability the ground of Desertion.
- 6.2.9. In consideration of the above, this Court finds that the Adultery, Cruelty and Desertion committed by the Respondent have led to the irretrievable breakdown of the marriage between the parties and there is no point of keeping it alive any longer. I therefore allow the Petition and order the marriage between the Petitioner and the Respondent dissolved.

## **7.0. ISSUE THREE:**

### **Whether the properties can be shared between the parties?**

- 7.1. 1. Matrimonial Property was defined in the case of **Charman Versus Charman (No 4) [2007] EWCA Civil 503; [2007] 1 FLR 1246** to mean “property of the parties generated during the marriage otherwise than by external donation”.
- 7.1.2. In **Julius Rwabinumi Versus Hope Bahimbisomwe, Supreme Court Civil Appeal No.10 of 2009**, in reference to **Article 31 (1) of the Constitution of the Republic of Uganda (1995)** stated that the said



Article guarantees equality in treatment of either the wife or husband at dissolution of the marriage, it does not, in my opinion, require that all property either individually or jointly acquired before or during the subsistence of a marriage should in all cases be shared equally upon divorce.

7.1.3. In **Essa Versus Essa, Kenya Court of Appeal, Civil Appeal No. 101 of 1995**, it was held that there is no presumption that any or all property acquired during subsistence of the marriage must be treated as being jointly owned by the parties. It is therefore fully possible for the property rights of parties to the marriage to be kept entirely separate. Whether the spouses contributing to the purchase should be considered to be equal owners or in some other proportions must depend on the circumstances of each case.

7.1.4. Equality of parties to the marriage during and after the marriage does not mean the mathematical division of the assets into two equal halves. Instead, it requires first, judicial assessment of what each party has brought to the table before any proper mathematical figures can be determined. The division and distribution of matrimonial property must proceed on the basis of fairness and conscience and each case must be considered on its own merit while bearing in mind the peculiarities, circumstances and the principles of fairness and human worth in each such case. Each party's contribution ought to be assessed and the same ought to form the basis for division.

7.1.5. The guiding principle should be that apportionment and division of matrimonial property may only be done where parties fulfill their obligation of proving what they are entitled to it by way of contribution.



- 7.1.6. It is necessary to state that in a marriage union, which is based on trust, no spouse anticipates that one day they will have to prove every contribution that they make as that would negate the very essence of trust which is the cornerstone of matrimonial unions.
- 7.1.7. Distribution of matrimonial property thus means that a party obtains an equivalent of what he/she contributes, monetarily or otherwise.
- 7.1.8. I am cognizant of the Malawian case of **Emma Kishindo Versus Paul A. Kishindo [2015] MWHC 447**, wherein the High Court held that in distributing property between spouses upon dissolution of a marriage, the court should consider the principle of fairness, justice, reasonableness, proportionality, conformity and solidarity that will result in the property being equally divided between the husband and the wife. The Court also discussed the concept of equality and fairness by holding that fairness depends on the circumstances of the case when it comes to disposal of property on dissolution of marriage while equality means that parties in a marriage are entitled to an equal share of the matrimonial property irrespective of the mode of acquisition. The Court held that:

***“There cannot be a blue print of what is fair that fits all. Fairness depends on circumstances on each case and one cannot successfully list all the circumstances. Consequently, decisions of this Court that I review should be understood as not laying any general or broad principle. They are each one of them an attempt by the Courts to be fair in the particular situation...”***

***“Applying all these principles to this case, the correct order in the circumstances is that all property is up to be shared fairly***



***subject to equality. Equality here implies that both husband and wife come on equal footing to property which, from the reasoning above, is jointly held between them and, in respect of the houses, irrespective of the motivation, the mode of acquisition or in whose name it is...”***

7.1.9. The Petitioner contends under paragraph 8 of her Petition that they her acquired properties as listed in this petition. The Petitioner made prayers in paragraph 17 (f) of the Petition on the way the said properties should be divided.

7.2. Property Distribution.

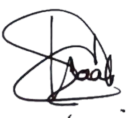
**Property 1. House No.1001, Building No. 2, Yunding Impression, Bagui Green City, No. 31, Zhuangjin Avenue, Jiangnan District.**

7.2.1. The Petitioner prayed that this property be accorded to her. She adduced evidence that the house belonged to her.

7.2.2. In the absence of any evidence to the contrary from the Respondent, I am inclined to accept the prayer put forward by the Petitioner. The property is therefore distributed to the Petitioner as her share of the matrimonial property.

**Property 2. House No.901, Building No.2, Yunding Impression, Bagui Green City, No.31, Zhuangjin Avenue, Jiangnan District**

7.2.3. The Petitioner adduced evidence that the property is jointly owned with the Respondent. She prayed that she retains the property. The



Respondent never availed himself at trial. In the absence of any evidence to the contrary, this court is mindful that this property is out of territorial jurisdiction but at the same time since no objection has been put forward by the Respondent, the petitioner's prayer will be considered. The property is hereby distributed to the Petitioner.

**Property 3: Volkswagen Passat, Registration Number UBA 210Q registered in the names of Senyonyi John Mbaziira.**

- 7.3. The Petitioner prayed that this motor vehicle be distributed to her. She adduced evidence that the vehicle is registered in the names of the Respondent, a logbook marked "PEX 17".
- 7.3.1. The log book for motor vehicle vide Registration Number: UBA 210Q, Make: Volkswagen, Model: Passat GF-3BAZM, Chassis Number: WWZZZZ3BZ4E035952 is registered in the name of Mr. John Senyonyi Mbaziira. Since the parties had other motor vehicles all registered in the Respondent's names, I will distribute the said motor vehicle to the Petitioner for her personal use.
- 7.3.2. The Respondent shall transfer of the motor vehicle into the name of the Petitioner within two weeks from the date of this Judgment.

**Property 4: Land at Ngobe, Bunamwaya, Block No. 256 Plot No. 9515 measuring approximately 0.4690 Hectares registered in the names of Senyonyi John Mbaziira.**

- 7.4. The Petitioner proposed that both parties be accorded 50% of the abovementioned property which shall later on be subdivided.
- 7.4.1. The said land is registered in the names of Senyonyi John Mbaziira vide Instrument No.WAK-00210445, on 5<sup>th</sup> March, 2019, as per



Certificate of Title (“PEX 11”). The land was obtained in the course of their marriage. Similarly, no evidence of the actual contributions was adduced by the Petitioner. The Respondent declined to avail himself of the opportunity to make his essential and material case known. It follows that the Respondent believed that the prayer made was fair and just.

7.4.2. I am alive to the fact that the 1995 Constitution of the Republic of Uganda grants land rights solely to the citizens of Uganda. Foreigners cannot own Mailo land in Uganda. Foreigners may, however, acquire leases not exceeding ninety-nine years. **(See Article 237 (1) and (2) of the Constitution and Section 40 (1), (3) and (4) of the Land Act, Cap.227 (as amended)).**

7.4.3. The property comprised in Kyadondo Block 265 Plot 9515 land at Bunamwaya, Wakiso District measuring 0.4690 Hectares registered in the name of Senyonyi John Mbaziira shall be sold and the proceeds therefrom equally shared between the Petitioner and the Respondent.

**Property 5: Land at Rubaga on Block No. 17 Plot No.1151 in the names of Justine Nakato and Block No. 17 Plot 1215.**

7.5. The Petitioner proposed that both her and the Respondent be accorded 50% of the abovementioned property which share she says emanates from the shareholding percentage she holds in the Company, 7 Days International Limited. The Petitioner also averred that this land is owned by the said Company.

7.5.1 The Petitioner adduced evidence of a copy of the Certificate of Title marked “PEX 8” for the land comprised Mailo Kibuga Block 17 Plot 1151


land at Rubaga measuring approximately 0.047 Hectares registered in the name of Nakato Justine in the year 2006 vide instrument number KLA294212 and with a copy of the land sale and purchase agreement dated 11<sup>th</sup> April 2019 for the said land which indicates the parties names both as the Purchasers of the land and Justine Nakato as the Vendor thereof.

7.5.2 The land sale agreement indicates that the land has structures (houses) on it and Block 17 Plot 1251 has an access road on it. Both Plots of land where purchased at a total consideration of UGX 180,000,000/- (Uganda Shillings One Hundred Eighty Million). Which was paid through Centenary Bank Real Time Gross Settlement (RTGS) Transfer Form vide Serial Number 044111 dated 11<sup>th</sup> April, 2019 by the Petitioner transferring a sum of UGX 130,000,000/- (Uganda Shillings Thirty Million only) from her Account Number 3200648983 held in Centenary Bank to the Bank Account of Justine Nakato vide Account 0100522196 held in Housing Finance Bank. The Purchase was done at a time when the parties where legally married.

7.5.3 It is evident that the Petitioner made a contribution towards the land comprised in Kibuga Block 17 Plots 1151 and 1215 land at Rubaga, which has not been challenged by the Respondent.

7.5.4 Although the Petitioner stated that the property is owned by 7 Days International Limited in which both parties have shares, the said Company which enjoys corporate legal status has not come out to assert that this property belongs to it neither is the Company party to the land sale and purchase agreement executed with Justine Nakato.

7.5.5 It is therefore this Court's finding that the property comprised in Private Mailo Kibuga Block 17 Plots 1151 and 1251 land at Rubaga which the



Petitioner averred that it belongs to the company which is jointly owned by the Petitioner and the Respondent remains property for the company.

**Property 6: Land and house situate at Block 244 Plot 5570 which house is registered in the name of Senyonyi John Mbaziira.**

- 7.6. The Petitioner prayed that this Court accords her quiet and exclusive possession over the abovementioned land and a ninety-nine-year lease on automatic renewal basis thereof.
- 7.6.1. The Petitioner availed this Honorable Court with a copy of the Certificate of Title marked “PEX 5” for the land comprised in Private Mailo Kyadondo Block 244 Plot 5570 land at Kisugu measuring 0.052 Hectares registered in the name of Ssenyonyi John Mbaziira on 15<sup>th</sup> June, 2022 vide instrument number KCCA-00093030.
- 7.6.2. The Petitioner also availed this Court with a copy of a Leasehold Certificate of Title marked “PEX 6” for land comprised in Leasehold Register Volume KCCA562 Folio 22 Block 244 Plot 5570 land at Kisugu, Kampala District measuring approximately 0.0520 Hectares registered in the name of Pang Xiao Yan on 29<sup>th</sup> June 2022 vide instrument number KCCA-00093625.
- 7.6.3. The abovementioned Leasehold property is derived from Block 244 Plot 5570 land at Kisugu registered in the name of Ssenyonyi John Mbaziira. This Property is hereby distributed to the Petitioner.

**Properties 7 to 16:**






7.7. The Petitioner prayed that the following listed properties be accorded to the Respondent;

- i. BMW X5, Registration Number UBA 528K registered in the names of Senyonyi John Mbaziira
- ii. Volkswagen Golf Variant, Registration Number UBG 840S registered in the names of Senyonyi John Mbaziira
- iii. Toyota Dyna Truck, Registration Number UBB 766X registered in the names of Senyonyi John Mbaziira
- iv. Land at Kisigula Wakiso District Block 256 Plot 7544 registered in the names of Joweria Nakalema.
- v. Land and house at Kirinyabigo, Wakiso District, Block 264 Plot 1300 registered in the names of Frank Sande Kimera.
- vi. Land at Korolo, Mpigi District, Block 113 Plot 97 registered in the names of Senyonyi John Mbaziira.
- vii. Land at Mutundwe Block 34 Plot 398 and Block 34 Plot 399 both registered in the names of Senyonyi John Mbaziira
- viii. Land and house at Mutundwe Block 33 Plot 776 registered in the names of Kaggwa Moses Mubiru
- ix. Land and houses at Kisigula, Bunamwaya, Block 265 Plot 5906 registered in the names of Senyonyi John Mbaziira

7.8 This Honorable Court shall not depart from the prayer of the Petitioner to accord the Respondent all the above listed properties. This is premised on the fact that the Petitioner having been married to the Respondent has reasons as to why she thinks it fit and proper. I am therefore inclined to accept the proposal made by the Petitioner to accord the Respondent.



### **Properties 17 – 20:**

7.8. The Petitioner proposed that the following listed properties should be transferred into the names of the company, 7 Days International Limited in which both parties have shares. These properties include:

- i) Isuzu Elf UAV 704F ( logbook adduced registered in the names of the Respondent PEX19)
- ii) Isuzu Elf UAX 823P ( logbook adduced registered in the names of the Respondent PEX16)
- iii) Toyota Dyna UAZ 167R (Registered in the names of the Respondent PEX18)
- iv) Toyota Spacio UBD 114H (Registered in the names of Respondent)
- v) No motor vehicle log book was availed for the Toyota Spacio UBD 114H.

7.9. The Petitioner also availed this Honorable Court with a certified true copy of the Certificate of Incorporation for 7 Days International Limited and Company Form No. 7 which shows the particulars of Directors and Secretaries of the Company.

7.10. The certificate of incorporation indicates that 7 Days International Limited was incorporated on 5<sup>th</sup> January, 2011 and the Petitioner is a Director and Secretary of the Company whereas the Respondent is a Director of the Company since 9<sup>th</sup> July, 2014.

7.11. The Petitioner did not avail this Court with the Memorandum and Articles of Association of the Company or the allotment of shares of the Company to enable Court know the actual shareholders of 7 Days International Limited and the extent of their shareholding.



Without proof of shareholding in the company, this court will not distribute 7 Days International Limited not even distribute the vehicles.

#### **8.0. ISSUE FOUR:**

##### **What remedies are available to the parties?**

- 8.1. The Petitioner prayed that her marriage to the Respondent be dissolved as provided for under **Section 4 of the Divorce Act**. The Petitioner has proved adultery, cruelty and desertion as the grounds for her divorce. The Petitioner to the knowledge of this court has not condoned, connived or colluded with the Respondent in seeking this court.
- 8.2. The Respondent was served and the evidence of service is on the Court record, however he never filed a reply to this petition. This court will not keep married couples together who no longer desire to be together. They voluntarily entered into the marriage and they should be able to voluntarily exist it.
- 8.3. The marriage between the Petitioner and the Respondent is hereby dissolved and a decree nisi granted.

#### **8.4. The Company, 7 Days International Limited**

- 8.4.1.** The Petitioner averred that both the Petitioner and Respondent are shareholders in 7 Days International Limited. The Petitioner prayed that 7 Days International Limited remains in the control of both parties as per the Memorandum and Articles of Association.
- 8.4.2.** As earlier pointed out, in the absence of any evidence such as Memorandum and Articles of Association or the company form for allotment of shares of 7 Days International Limited, this Court is



unable to know the actual shareholders of the Company and the extent of their shareholding.

**8.4.3.** A Company enjoys corporate legal status (*see the case of Salmon Versus Salmon and Co. Ltd [1897] A.C 22*) and being that it is not a party to this Petition, it would be wrong to impose on it the above sought for orders without according it a fair hearing.

#### **9.0. Costs**

9.1. This being a family matter, I make no order as to costs.

#### **10.0. Conclusion**

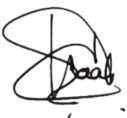
10.1. Accordingly, this Court makes the following orders:

1. A Decree Nisi is hereby pronounced in dissolution of the marriage between the Petitioner and the Respondent.
2. The properties listed herein below are distributed as follows:
  - a) The Petitioner continues to individually own the property comprised in House No.1001, Building No. 2, Yunding Impression, Bagui Green City, No. 31, Zhuangjin Avenue, Jiangnan District as her share of the matrimonial property.
  - b) The Petitioner individually owns the property comprised in House No.901, Building No.2, Yunding Impression, Bagui Green City, No.31, Zhuangjin Avenue, Jiangnan District as her share of the matrimonial property. The Respondent is hereby ordered to avail the Petitioner with transfer instruments for this property and all other required documents within a month from the date of this Judgment to enable the Petitioner transfer.
  - c) The Petitioner shall own the motor vehicle vide Registration Number: UBA 210Q, Make: Volkswagen, Model: Passat GF-



3BAZM, Chassis Number: WVVZZZ3BZ4E035952. The Respondent is hereby ordered to effect a transfer of the motor vehicle into the name of the Petitioner within two weeks from the date of this Judgment.

- d) The property comprised in Kyadondo Block 265 Plot 9515 land at Bunamwaya, Wakiso District measuring 0.4690 Hectares registered in the name of Senyonyi John Mbaziira be sold and the proceeds therefrom equally shared between the Petitioner and the Respondent.
- e) The property comprised in Mailo Kibuga Block 17 Plots 1151 and 1251 land at Rubaga shall remain property of the company.
- f) The Respondent accords the Petitioner quiet and exclusive possession over land comprised in Block 244 Plot 5570 land at Kisugu registered in the name of Senyonyi John Mbaziira on which the Petitioner has a ninety-nine-year lease.
- g) The Respondent takes the following properties as his share of the matrimonial property in so as they are not owned by other third parties. These include:
  - i) BMW X5, Registration Number UBA 528K registered in the names of Senyonyi John Mbaziira
  - ii) Volkswagen Golf Variant, Registration Number UBG 840S registered in the names of Senyonyi John Mbaziira
  - iii) Toyota Dyna Truck, Registration Number UBB 766X registered in the names of Senyonyi John Mbaziira
  - iv) Land at Kisigula Wakiso District Block 256 Plot 7544 registered in the names of Joweria Nakalema.



- v) Land and house at Kirinyabigo, Wakiso District, Block 264 Plot 1300 registered in the names of Frank Sande Kimera.
- vi) Land at Korolo, Mpigi District, Block 113 Plot 97 registered in the names of Senyonyi John Mbaziira.
- vii) Land at Mutundwe Block 34 Plot 398 and Block 34 Plot 399 both registered in the names of Senyonyi John Mbaziira
- viii) Land and house at Mutundwe Block 33 Plot 776 registered in the names of Kaggwa Moses Mubiru
- ix) Land and houses at Kisigula, Bunamwaya, Block 265 Plot 5906 registered in the names of Senyonyi John Mbaziira
- h) The Company, 7 Days International Limited shall remain in control of both parties as shareholders.
- i) All other matters as prayed for by the Petitioner relating to the operations of the Company, 7 Days International shall be resolved by its Board of Directors.
- j) I make no order as to costs.

I so order.

***Dated, signed and delivered by email this 08<sup>th</sup> day of December, 2023.***



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**CELIA NAGAWA  
AG. JUDGE**