

DIVORCE CAUSE NO.227 OF 2021

3. It is the petitioner's case that; before the solemnization of marriage, the respondent misrepresented and lied to him that she was pregnant and gave birth to a boy (Wandera George Steven); upon carrying out a DNA test on all the three children, it was found that the said Wandera George Steven is not the petitioner's son; the respondent illegally took the said child from an orphanage (Noah's Children's Ministry Uganda Mukono); before and after the marriage, the respondent continuously lied to the petitioner that she had only given birth to three children; yet there were other two biological children belonging to her;
4. The respondent was engaged in extra marital affairs, witchcraft, disrespect and emotional torture accompanied with violence; threats of death, hostility; went ahead and abandoned the matrimonial home taking with her all the children and stole all the household properties amounting to UGX 36,000,000/= (Thirty million shillings) leaving the house empty; the marriage with the respondent has irretrievably broken down and should be dissolved.
5. The respondent did not file a reply; court issued two summonses on different dates to be served upon the respondent; the petitioner failed to trace the respondent; by order of court, substituted service was effected on the respondent by advertising in Bukedde Newspaper dated 11th day of May 2022; this court upon being satisfied through the affidavit of service on record that substituted service was effected upon the respondent, directed that the matter proceeds exparte under Order 9 rule 20 (1)(a) of the Civil Procedure Rules.
6. The position of the law is that a party who fails to file a defence puts himself out of court and no longer has any locus standi and cannot be heard. (see: Sengendo Versus Attorney General (1972)1 EA 140; Mufumba Fredrick V. Waako Lastone Revision Cause No. 006 of 2011); therefore, the respondent having failed to file an answer to the petition, she automatically lost the right to be heard. I shall therefore go ahead to resolve the petition on the facts and evidence adduced by the petition.

Representation:

1. The petitioner is represented by counsel Nasuuna Victoria of M/s Heritage Associated Advocates.



Issues:

2. Counsel for the petitioner proposed three issues for determination; Issues are questions gleaned from the pleadings to assist court resolve the controversy between the parties; court therefore, since it is enjoined to resolve matters before it to ensure that substantive justice is rendered, if it finds that the questions framed by counsel do not adequately bring out the basis of the conflict; it may frame the additional issues or recast those earlier framed and go ahead and resolve them (see Order 15 rule 5(1) of the Civil Procedure Rules)

I have reframed three issues to wit:

- i. Whether there exists a valid marriage between the petitioner and the respondent?
- ii. Whether there are any grounds for divorce?
- iii. What remedies are available to the parties?

Court's determination:

Issue 1: Whether there exists a valid marriage between the petitioner and the respondent?

3. It is the petitioner's evidence that; the marriage between him and the respondent was solemnized under the Marriage Act, on the 28th day of December 2019 at Our Lady of Lourdes Catholic Church; he did not present to court a copy of the marriage certificate as evidence of marriage; he attached photographs to the petition allegedly showing the marriage ceremony between the petitioner and the respondent.
4. It is important to determine whether a marriage exists for court can not dissolve what does not exist and by implication can not consider whether to grant reliefs sought unless a marriage has been proved; photographs showing persons including the petitioner allegedly getting married to someone can not on their own prove a marriage without other supporting evidence especially in a situation where the matter is proceeding ex parte;
5. Section 33 of the Marriage Act cap. 251 of the Laws of Uganda provides: *'Every certificate of marriage which shall have been filed in the office of the registrar of any district, or a copy of it, purporting to be signed and certified as a true copy by the registrar of that district for the time being, and every entry in a Marriage Register Book or a copy of it, certified as aforesaid, shall be admissible as evidence of the marriage to which it relates, in any court of justice or before any*



person now or hereafter having by law or consent of parties authority to hear, receive and examine evidence’.

6. A marriage under the Marriage Act is a registered process so it can only be proved by a Marriage Certificate, a certified copy or when both parties are before court and they bring supporting evidence including but no limited to photographs, for photographs alone can be taken any time; a marriage celebrated in church like the one between the petitioner and the respondent in this case, ought to be confirmed by the church where it took place in absence of the original marriage Certificate; where the photographs like in this case do not show registration of the marriage before a priest it would be a tall order to expect court to be convinced that a marriage took place;
7. In the Indian case of Ramesh Kumar vs Asha Devi HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH **on 4 November, 2009**, Court held that wedding photographs are not sufficient to prove marriage especially when the same are not exhibited and proved on record in accordance with the evidence Act; even then the party has to lead secondary evidence to prove the said photographs; the petitioner’s statement alone that the photographs were taken at his marriage to the respondent are not sufficient; I am persuaded by the said position.
8. In a situation like the one before court now where the respondent did not file a reply the requirement to prove the case by the petitioner is even higher first of all he must prove that the respondent is a real person, she is alive, he got married to her and that she is the one in the photographs;
9. 101 (1) of the Evidence Act provides: *‘Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he or she asserts must prove that those facts exist.*

101(2) ‘When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.

Section 102 provides; ‘The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side’.

Section 103 provides ; ‘The burden of proof as to any particular fact lies on that person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person’.



(see Nsubuga vs. Kavuma [1978] HCB 307) where the position was considered and restated; whoever wishes to win must prove what he/she alleges..

The petitioner in this case has failed to prove that there is a marriage between him and the respondent; in the premises there is nothing to consider;

The petition has no merit and it is hereby dismissed



Ketrah Kitariisibwa Katunguka

Judge

23/01/2023

Delivered

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