

DIVORCE CAUSE NO. 183 OF 2022

VERSUS

JUDGMENT BEFORE: HON. LADY JUSTICE CELIA NAGAWA

1.2 The Petitioner was represented by Counsel Mark Kamanzi of M/S M Kamanzi & Company Advocates, Ggaba Road, Kampala upon Change of Advocates from Counsel Innocent Ndiko of M/S Ngobi Ndiko Advocates, Kampala.

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- 1.3 The Respondent resides in Cairo Egypt and as a result, was served through his WhatsApp Phone number on 12th October 2022. The Respondent activated Disappearing Messages on the App and therefore all communication with the Respondent disappears after a set time. The Respondent has also failed to answer phone calls made to him through WhatsApp. He was served via the same method again on the 19th day of October 2022.
- 1.4 On 22nd March, 2022, Counsel for the Petitioner prayed that this electronic mode of Service be accepted by this Court. He relied on Hon. Justice Musa Ssekaana's ruling in **Male Mabirizi Versus Attorney General Misc. Application No. 918 of 2021**. The court acknowledged Service and further directed the Petitioner to advertise the hearing notice in the Daily Monitor Newspaper and on the Court's Noticeboard. The Petitioner complied and an Affidavit of Service deposed by Wasirwa Francis was filed at this court on the 13th July, 2023. The court proceeded to hear the matter.

2.0 Background.

- 2.1 The Petitioner and the Respondent solemnized their marriage on the 28th day of December 2013 at St. Augustine Chapel, Makerere University in Kampala. They did not have any children together.
- 2.2 The Petitioner and the Respondent lived and cohabited together in Kampala Uganda, New Delhi India, United Arab Emirates and Cairo Egypt. The Petitioner avers that during the subsistence of the Marriage, she made an effort to visit the Respondent wherever he was relocated or staying.



- 2.3 The Petitioner lives and works in Dubai. She is employed by Emirates and the Respondent works as a Foreign Service Officer with the Ministry of Foreign Affairs. The Respondent has been stationed in India, Uganda, and currently in Egypt in the time that the parties have been married.
- 2.4 That during the subsistence of the Marriage, the Respondent committed Adultery and fathered a child with an Ethiopian Lady who currently resides in the United States of America. The Petitioner further contends that the Respondent fell in with bad company while living in Cairo. That he took to Substance Abuse and blatant Adultery by signing up to dating sites like Tinder. She further states that when she visited the Respondent in Cairo, she found feminine items like make up and hygiene products that did not belong to her. She also states that she contracted sexually transmitted infections after being sexually intimate with the Respondent.
- 2.5 The Respondent abused drugs and during some of his episodes, he demanded that the Petitioner be intimate with him. The Respondent was withdrawn and often returned with red eyes. The Petitioner found small bags of the said drugs in his key holder on one occasion and on another in his shorts.
- 2.6 During the Petitioner's stay in Dubai, she underwent spinal fusion Surgery and although the Respondent was on leave in Uganda, he never made any attempt to visit her. Despite efforts to rebuild the relationship by the Petitioner, such as getaway in Egypt, there has been a breakdown in the relationship between the parties. The Respondent failed to visit the Petitioner in Dubai despite various tickets purchased by her leading to the loss of a lot of money.



- 2.7 The Petitioner visited the Respondent in Cairo only to be informed that he had taken school fees loans for their non-existent children and on another occasion, she found that he had a girlfriend that he was cohabiting with in Cairo.
- 2.8 The Applicant contends that she was subjected to various forms of torture including silent treatment, psychological abuse, rejection, ridicule and lies contrary to the principles of sanctity of Marriage.
- 2.9 The Applicant further states that the Respondent owns land in Mbarara where trees are planted to which she contributed UGX 4,000,000/= (Four Million Uganda Shillings), visited and supervised the project.

3.0 Evidence of the Parties.

1. The Petitioner and the Respondent were married at St. Augustine Chapel Makerere on the 28th December, 2013. The Marriage Certificate is marked **“PEX 1”**.
2. The Petitioner is employed by Emirates and her Service Certificate of Employment together with her Pay Slips are marked **“PEX 2 & 3”**.
3. The Petitioner and the Respondent had a matrimonial home in Bukoto Kampala and pictures of it are marked **“PEX 4”**.
4. Proof of payment for the Bukoto land where the house was/is being constructed marked **“PEX 5”**.
5. Statement of Account Dubai loan is also attached and marked **“PEX 6”**.
6. Statement of Joint Account at Housing Finance Bank is marked **“PEX 7”**.
7. Copies of the Petitioner’s flight schedules are marked **“PEX 8”**.



8. Proof of purchase of the Namulanda Land is marked “**PEX 9**”.
9. A Valuation Report from Knight Frank is marked “**PEX 10**”.
10. The Statement of the Search on the land is marked “**PEX 11**”.
11. WhatsApp and Email correspondences between the parties have also been availed to this court, marked “**PEX 12 & 13**”.

4.0 Issues to be determined by the Court.

1. Whether there are any grounds for Divorce?
2. What Remedies are available to the parties?

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 by virtue of Section 101, 102 and 103 of the Evidence Act, Cap. 6 has the burden to prove the facts alleged by him in the Petition. Section 101 of the Evidence Act 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*”.

6.0 Submissions.

- 6.1 I perused and analyzed the Petitioner’s written submissions. I appreciate counsel’s submissions and arguments in his endeavor to resolve this petition in favor of his client. I evaluated and examined the petition and the documentary evidence, as required by law. The written submissions by Counsel have been taken into consideration in determination of this Petition.



7.0 Determination of Issues by the Court.

Whether there are any grounds for Divorce?

7.1 It has been determined that a Marriage exists between the Petitioner and the Respondent. They got married on 28th December, 2013 at St Augustine Chapel Makerere. It is important to establish the existence of a valid Marriage between the parties because it is on that basis that the Marriage is dissolved. This is as elucidated under **Section 33 of the Marriage Act, Cap. 251** which provides that, 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. **Kintu Muwanga Versus Myllious G. Kintu Divorce Appeal No. 135 of 1997.**

7.2 **Section 18 of the Law Revision (Miscellaneous Amendments) Act, 2023 that amended Section 4 of the Divorce Act Cap 249** following the decision in **Uganda Association of Women Lawyers (FIDA) & 5 Others Versus Attorney General Constitutional Petition No 2/2002**, 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.

7.3 In this petition, the Petitioner relied on the grounds of Cruelty and Adultery. The petition will be successful under **Section 8 of the Divorce Act Cap 249** 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. This court will examine the validity of both grounds presented by the Petitioner.

Adultery.

7.4 Legally defined, 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. It is difficult, burdensome and acrimonious to establish or provide evidence of the "Physical Act" of Adultery. To this end, Justice Ntagoba, *(as he then was)* in **George Nyakairu Vs Rose Nyakairu (1979) HCB 261** determined that in allegations of adultery, it is not necessary to prove the direct act of adultery for the fact was almost always to be inferred from the circumstances as a necessary



conclusion. The Petitioner also relied on the case of **Dr. Specioza Wandera Kazibwe V Engineer Charles Nsubuga DC No. 3 of 2003**, to state that Adultery can be proved by the Petitioner adducing circumstantial or direct evidence to prove it.

- 7.5 In this petition, the Respondent contended that during the subsistence of the Marriage, the Respondent committed adultery and fathered a child with an Ethiopian Lady, that he signed up to dating sites like Tinder and when she visited the Respondent in Cairo, she found feminine items like make up and hygiene products that did not belong to her. She also stated that she contracted sexually transmitted infections after being sexually intimate with the Respondent. Furthermore, when the Petitioner visited the Respondent in Cairo, she found that he had a girlfriend that he was cohabiting with and was denied access to the house. This is detailed under Paragraphs, 7, 8, 10, 15, 16, 19, 22, 23 and 24 of her Evidence in Chief.
- 7.6 Furthermore, in the email correspondences marked **“PEX 13”** on the trial bundle, the Respondent in his Reply to the Petitioner’s email where she addresses his acts of Adultery, does not deny the assertion that he committed Adultery but apologizes for his actions and promises changed behavior.
- 7.7 All these actions coupled together with the fact that the Respondent fathered a child out of Marriage, prove the ground of Adultery. (See ***Rosette Tabitha Nakiryowa Mabikke Versus Michael Mabikke Divorce Cause No. 68 of 2020*** as held by Lady Justice Jeanne Rwakakooko).



Cruelty.

- 7.8 Cruelty was defined in the case of **James Love Versus Unity Twesigye Divorce Cause No.162 Of 2022 citing Habyarimana Versus Habyarimana (1980) HCB 139**, to mean any conduct that produces actual or apprehended injury to mental health. Cruelty may be mental and it may include injuries, reproaches, complaints, accusations, taunts, denial of conjugal rights among others. Mental cruelty is a state of mind, it is the feeling of deep anguish, disappointment, or frustration in one spouse caused by the conduct of the other over a long period of time.
- 7.9 In the cause, the court stated that to constitute cruelty, the conduct complained of should be "grave and weighty" so as to come to the conclusion that the Petitioner's spouse cannot be reasonably expected to live with the other spouse. It must be something more serious than "ordinary wear and tear of married life". Mere coldness or lack of affection cannot amount to cruelty however frequent rudeness of language, petulance of manner, indifference, and neglect may reach such a degree that it makes the married life for the other spouse absolutely intolerable. The conduct must be much more than jealousy, selfishness, and possessiveness, which causes unhappiness and dissatisfaction. Being emotionally upset may not be a valid ground for granting a divorce on the grounds of mental cruelty.
- 7.10 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.**

- 7.11 The Petitioner averred that during the subsistence of the Marriage, the Respondent committed Adultery thereby exposing her to the contraction of sexually transmitted infections after being sexually intimate with him, the Respondent abused drugs and during some of his episodes, he demanded that the Petitioner be intimate with him. The Respondent was withdrawn on the Petitioners' visit and often returned with red eyes. The Petitioner found small bags of the said drugs in his key holder on one occasion and on another in his shorts when he visited her in Dubai, putting her employment in jeopardy.
- 7.12 The Petitioner underwent spinal fusion Surgery and although the Respondent was on leave in Uganda, he never made any attempt to visit her. The Respondent denied the Petitioner conjugal rights and failed to visit the Petitioner in Dubai despite tickets purchased by her leading to the loss of a lot of money. This is as evidenced in the WhatsApp correspondences between the Parties in **“PEX 12”**.
- 7.13 The Petitioner further contended that she was subjected to various forms of torture including silent treatment, psychological abuse, rejection, ridicule and lies contrary to the principles of sanctity of Marriage. This is detailed under Paragraphs 7, 8, 9, 10, 13, 14, 15, 16, 17, 18, and 19 of her evidence in Chief.
- 7.14 Denial of Conjugal rights amounts to Cruelty, Substance Abuse, especially that which puts one's spouse in danger extending to their livelihood and source of income amounts to Cruelty. In this case, the Respondent brought drugs to the Petitioner's place of Employment. Infecting the Petitioner with Sexually Transmitted Infections, Silent



Treatment and financial irresponsibility and fathering a Child out of the marriage amounts to Cruelty as they go beyond the ordinary wear and tear of Married Life.

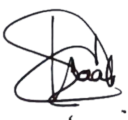
7.15 In consideration of all the above, I find that the marriage has broken down irretrievably and there is no point of keeping together parties that no longer want to be married. In this case, it might have been the Petitioner that Petitioned for Divorce, but the Respondent's conduct extending to his failure to reply to this Petition shows that he was already mentally checked out of the Marriage and that the marriage has hit the end of the road. Despite marriage vows, marriage is a voluntary endeavor, parties cannot and should not be bound in Marriage when it is clear they no longer wish to be. This court therefore allows the Petition and order the marriage between the Petitioner and the Respondent dissolved.

8.0 What Remedies are available to the Parties?

Decree Nisi

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 cruelty and Adultery 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.

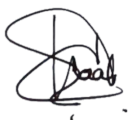
8.2 The Respondent was served and the evidence of service is on the Court record, however he never filed a reply to this petition. The Petitioner voluntarily entered into the marriage and she should be able to voluntarily exist it. The petitioner is therefore entitled to a Decree Nisi



as provided for under **Section 4 of the Divorce Act, Cap. 249 as amended by Section 18 of the Law Revision (Miscellaneous Amendments) Act, 2023.**

Matrimonial Property.

- 8.3 Matrimonial Property was defined in the case of **Charman Vs. 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’.
- 8.4 In this case, the property referred to as Matrimonial property containing their Matrimonial house comprised at Kyadondo, Block 216, Plot 4472 Bukoto is registered in a 3rd Party’s name Generosa Muramira Harriet, who is the Respondent’s mother. This is as evidenced by the Search Report marked “**PEX 11**” on the Petitioner’s Trial Bundle. Under **Section 59 Registration of Titles Act Cap 259** possession of a certificate of title by a registered person is conclusive evidence of ownership of the land described therein. The 3rd party shall not be condemned unheard and the court shall therefore leave the determination of ownership in this property to the suit filed at the High Court Land Division.
- 8.5 However, I realize that the counsel for the Petitioner did not submit on the purchase of land at Namulanda “PEX 9” equally the land in Mbarara were the Petitioner testified that she planted trees and built and bought a gate plus contributing towards the maintenance of the planted trees, she visited and supervised the tree project.



8.6 I will allow the refund of UGX. 4,000,000/= as the Petitioner's expense towards the tree project in Mbarara and UGX. 1,500,000/= towards her time of supervision.

Costs

8.7 Having successfully proven Adultery on the part of the Respondent, Costs are hereby awarded to the Petitioner.

9.0 Conclusion.

9.1. Accordingly, this court makes the following orders;

1. This petition is allowed.
2. A decree Nisi is hereby pronounced in dissolution of the marriage between the petitioner and the respondent.
3. The Petitioner is awarded UGX. 4,000,000/= as compensation towards that trees planting project and UGX. 1,500,000/= towards her supervision of the trees project.
4. Costs awarded to the Petitioner.

Dated, Signed and Delivered via Email this 20th day of March, 2024.



**CELIA NAGAWA
JUDGE**